TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~493~~ 248 50

WILLIAM MINOT, JR., APPELLANT,

vs.

THE PHILADELPHIA, WILMINGTON AND BALTIMORE RAILROAD COMPANY, W. J. CLARKE, AND M. B. OCHELTREE.

FILED DECEMBER 7, 1871.

No. ~~849~~ 381/168

W. J. CLARKE AND M. B. OCHELTREE, APPELLANTS,

vs.

WILLIAM MINOT, JR.

FILED MAY 2, 1872.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF DELAWARE.

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...corporate the

1 Circuit court of the United States of America for the district of Delaware.

UNITED STATES OF AMERICA,
District of Delaware, ss:

At a stated term of the circuit court of the United States of America for the district of Delaware, begun and held according to law, at the city of Wilmington, in said district of Delaware, on the third Tuesday (being the eighteenth day) of October, A. D. 1870—present the Honorable William Strong, justice, presiding; John M. Dunn, marshal; Charles G. Rumford, clerk—among other, the following proceedings were had, to wit:

WILLIAM MINOT, JR., A CITIZEN OF THE STATE of Massachusetts,
vs.
THE PHILADELPHIA, WILMINGTON AND BALTIMORE Railroad Company, a body corporate of the State of Delaware, and William J. Clarke, and M. B. Ocheltree, citizens of the State of Delaware. } In equity.

Be it remembered that, heretofore, to wit, on the nineteenth day of November, A. D. 1869, came the complainant, by his solicitor, George C. Gordon, esquire, and filed his bill of complaint; which bill of complaint is as follows, to wit:

2 To the judges of the circuit court of the United States for the district of Delaware:

William Minot, jr., of Boston, in the State of Massachusetts, a citizen of the State of Massachusetts, brings this his bill as well *as* on behalf of himself as of all such other holders of shares of the capital stock of the Philadelphia, Wilmington and Baltimore Railroad Company as being duly entitled may become parties to this suit, against the said, the Philadelphia, Wilmington and Baltimore Railroad Company, a body corporate of the State of Delaware by the law of that State, a citizen of the State of Delaware, and William J. Clark and M. B. Ocheltree, citizens of the State of Delaware; and thereupon your orator complains and says:

First. That he is a citizen of the United States and of the State of Massachusetts and that he is owner of a number of shares of the capital stock of the Philadelphia, Wilmington and Baltimore Railroad Company, party hereto, defendant, and that as such stockholder he is entitled to require that the rights and franchises of the said corporation shall be duly maintained and defended, and that its money or other property shall not be appropriated to the payment of illegal and unfounded demands.

Second. That the said Philadelphia, Wilmington and Baltimore Railroad Company is a body corporate of the State of Delaware, under the laws of that State, and is a citizen of the State of Delaware; that William J. Clark is treasurer, and M. B. Ocheltree collector of the State taxes of the State of Delaware, and that both are citizens of the State of Delaware.

Third. That under and in pursuance of an act of the general assembly of the State of Delaware, entitled "An act to incorporate the

3 Wilmington and Susquehanna Railroad Company," enacted on the 18th day of January, A. D. 1832, and a supplement thereto enacted on the 26th day of January, A. D. 1835, entitled, "A supplement to the act entitled 'An act to incorporate the Wilmington and Susquehanna Railroad Company,'" (to both of which acts your orator craves leave to refer as if the same were herein fully and at large set forth,) and by the due performance of all things thereby required, there was created and established a corporation of the State of Delaware by the name and title of the Wilmington and Susquehanna Railroad Company, with all the rights, privileges, and franchises by the said acts conferred, including therein the power to construct and maintain a railroad extending from a point on the boundary-line of the States of Pennsylvania and Delaware to the city of Wilmington, and thence to the line of the State of Delaware "towards the Susquehanna in the direction of Baltimore."

Fourth. That under and in pursuance of the provisions of an act of the general assembly of the State of Delaware, entitled "A further supplement to an act entitled 'An act to incorporate the Wilmington and Susquehanna Railroad Company,'" passed the 24th day of July, 1835, and of an act of the general assembly of the State of Maryland, entitled "A further supplement to the act entitled 'An act to incorporate the Delaware and Maryland Railroad Company,'" passed at the December session, in the year 1835, of the said general assembly, "the said Wilmington and Susquehanna Railroad Company" of the State of Delaware, was united with the Delaware and Maryland Railroad Company of the State of Maryland, the capital stocks of the two companies were consolidated, and the two companies became and constituted one body, politic and corporate, by the name, style, and title of "the Wilmington and Susquehanna Railroad Company," as will appear by reference to the said acts of assembly, and the proceedings of a meeting of the stockholders of the said two companies, held in the city of Wilmington on the 18th day of April, A. D. 1836, which proceedings were duly certified and recorded as in the said acts provided; and your orator hereby craves leave to refer to the said acts of assembly, and to the certificates of the said proceedings as though the same were herein fully set forth.

Fifth. That by the first section of the act of the general as-
4 sembly of the State of Delaware hereinbefore last referred to, it was provided that the holders of the stock of the two companies, when consolidated under the name, style, and title of "the Wilmington and Susquehanna Railroad Company," should hold, possess, and enjoy all the property, rights, and privileges, and exercise all the powers granted to and vested in the said railroad companies, or either of them, by that or any other law or laws of the State of Delaware and Maryland, and by the first section of the act of the general assembly of the State of Maryland, hereinbefore last referred to, the said above-recited section of the act of the general assembly of the State of Delaware was ratified and adopted by the general assembly of the State of Maryland, and the rights and authorities, privileges and powers, conferred by the said section of the act of the general assembly of the State of Delaware on the Wilmington and Susquehanna and Delaware and Maryland Railroad companies, upon the terms and conditions therein stated, were thereby granted to the said companies, and to "the Wilmington and Susquehanna Railroad Company," when the said companies should have been united and formed into one corporation.

Sixth. That the aforesaid Delaware and Maryland Railroad Company

was, at the time of the said consolidation, a corporation created by and existing under the provisions of an act of the general assembly of the State of Maryland, entitled "An act to incorporate the Delaware and Maryland Railroad Companies[y]," passed at the December session, in the year 1831, of the said general assembly, and under the provisions of the several supplements thereto, (to all of which your orator craves leave to refer as if the same were herein fully and at large set forth,) and possessed and enjoyed all the corporate rights, powers, and privileges by the said act and the supplements thereto conferred, including therein the power to construct and maintain a railroad from some point on the Delaware and Maryland line, to be determined by the president and directors of the said company, through the town of Elkton to some point on the Susquehanna River; and that by the 19th section of the original act incorporating the said company, it was provided that the shares of its capital stock should be deemed and considered personal estate, and should be exempt from the imposition of any tax or burthen by the States assenting to the said act, except upon that portion of the permanent and fixed works of said company which might lie within the State of Maryland.

5 Seventh. That the authorized capital stock of the original Wilmington and Susquehanna Railroad Company consisted of eight thousand shares of the par value of fifty dollars per share; that the fourth section of the act of the general assembly of the State of Delaware, of July 24th, 1835, under and in pursuance of which the union and consolidation of the said company with the Delaware and Maryland Railroad Company of the State of Maryland, took place, expressly provided that the Wilmington and Susquehanna Railroad Company should pay annually into the treasury of the State of Delaware a tax of one-quarter of one per cent. on the capital stock thereof of four hundred thousand dollars, the said tax to be paid semi-annually on the first day of January and the first day of July in each and every year thereafter; the first payment of five hundred dollars to be made on the first day of January then next ensuing; that no other stipulation or condition in reference to the liability of the said consolidated company to taxation by the State of Delaware, either upon its capital stock or otherwise, was contained in the said act.

Eighth. That the acceptance of the provisions of the said act of July 24th, 1835, of the State of Delaware, and of the corresponding act of December session, 1835, of the State of Maryland, by the stockholders of the original Wilmington and Susquehanna Railroad Company and of the Delaware and Maryland Railroad Company, and the formation of the consolidated Wilmington and Susquehanna Railroad Company under and in pursuance thereof, created a contract between the State of Delaware and the said consolidated company, which, by necessary implication, precluded the said State from taxing the capital stock of the said consolidated company, except as in the fourth section of the said act of July 24th, 1835, provided, and which also in express terms secured (except as aforesaid) to the consolidated company exemption from taxation of its shares of capital stock, as being one of the privileges enjoyed and possessed by the Delaware and Maryland Railroad Company, under its charter from the State of Maryland.

Ninth. That on the 5th day of February, A. D. 1838, articles of union and consolidation were entered into by and between the then Wilmington and Susquehanna Railroad Company, the Baltimore and Port

6 Deposit Railroad Company, a corporation of the State of Maryland, and the then Philadelphia, Wilmington and Baltimore Railroad

Company, a corporation of the State of Pennsylvania, by which the said three corporations were united and merged into one body corporate, under the name and style of the Philadelphia, Wilmington and Baltimore Railroad Company; and the stocks of the said three corporations were consolidated into one common stock, of which sixteen thousand shares, of the par value of fifty dollars per share, were awarded to the stockholders of the Wilmington and Susquehanna Railroad Company, nineteen thousand shares of the same par value to the stockholders of the Baltimore and Port Deposit Railroad Company, and ten thousand shares of the same par value to the stockholders of the then Philadelphia, Wilmington and Baltimore Railroad Company.

Tenth. That the said Baltimore and Port Deposit Railroad Company was a corporation created by an act of the general assembly of the State of Maryland, at its December session of 1831, entitled "An act to incorporate the Baltimore and Port Deposit Railroad Company," to which, and the several supplements thereto, your orator craves leave to refer, as if the same were herein fully and at large set forth; and that among the franchises, rights, and privileges by the said act and its supplements conferred, was that of constructing and maintaining a railroad from the city of Baltimore to Port Deposit on the Susquehanna River.

Eleventh. That the said Philadelphia, Wilmington and Baltimore Railroad Company, one of the companies forming the aforesaid union, was originally incorporated as "the Philadelphia and Delaware County Railroad Company," under and in pursuance of an act of the general assembly of the Commonwealth of Pennsylvania, approved the second day of April, 1831, entitled "An act authorizing the governor to incorporate the Philadelphia and Delaware County and Southwark Railroad Companies;" that, by the 5th section of an act of the said general assembly, approved the fourteenth day of March, A. D. 1836, entitled "An act supplementary to the act entitled 'An act authorizing the governor to incorporate the Philadelphia and Delaware County and Southwark Railroad Companies,'" passed the second day of April, anno Domini one thousand eight hundred and thirty-one, the name of the said cor-
7 poration was changed to that of "the Philadelphia, Wilmington and Baltimore Railroad Company;" that the said corporation was authorized and empowered to construct and maintain a railroad from the city of Philadelphia to the boundary-line of the State of Delaware, and possessed all the other franchises, rights, and privileges by the said original act of incorporation and the several supplements thereto contained, to which act and supplements your orator craves leave to refer as if the same were herein fully and at large set forth.

Twelfth. That the said union and consolidation of the said three companies by which the Philadelphia, Wilmington and Baltimore Railroad Company, party defendant to this bill, was formed, was authorized by an act of the general assembly of the State of Delaware, passed at Dover, on the fourth day of February, 1833, entitled "A supplement to the act entitled 'An act to incorporate the Wilmington and Susquehanna Railroad Company,'" by which the president and directors of the Wilmington and Susquehanna Railroad Company were authorized and empowered to form a union with such companies as were or might be incorporated in the States of Pennsylvania and Maryland, for the purpose of constructing railroads in the said State to unite with the railroad contemplated by the act creating the said Wilmington and Susquehanna Railroad Company, so that the said companies, respectively, should constitute a common stock, and the respective companies constitute one company, and be entitled to all the rights, privileges, and immunities

which each and all of them possessed, held, and enjoyed under their respective charters, by an act of the general assembly of the Commonwealth of Maryland, passed at their December session, 1837, entitled "An act to authorize the union of the Baltimore and Port Deposit Railroad Company, the Wilimington and Susquehanna Railroad Company, and the Philadelphia, Wilmington and Baltimore Railroad Company," by which act it was provided that the body corporate, so formed by the said union, should be entitled, within the State of Maryland, to all the powers and privileges and advantages then belonging to the two first above-named corporations; and by an act of the general assembly of the Commonwealth of Pennsylvania, approved the nineteenth day of December, A. D. 1837, entitled "An act supplementary to the act incor-
8 porating the Philadelphia, Wilmington and Baltimore Railroad Company," by which it was made lawful for the said company to form a union with the Wilmington and Susquehanna Railroad and the Baltimore and Port Deposit Railroad Company, so that the stock of the three companies should constitute a common stock, upon such terms and conditions as the said companies should respectively agree upon, and it was provided that, upon the said union being effected and certified to, as in the said act prescribed, the stockholders of the said companies should become one body politic and corporate, under the name and style of "the Philadelphia, Wilmington and Baltimore Railroad Company," with all rights and privileges incident to a corporation, and with all the rights, powers, and privileges, which, by virtue of any law of the said Commonwealth of Pennsylvania, were vested in the Philadelphia, Wilmington and Baltimore Railroad Company.

Thirteenth. That prior to the consolidation of the said three companies, "the Baltimore and Port Deposit Railroad Company" had constructed a railroad, extending from Baltimore to the west shore of the Susquehanna River; the consolidated Wilmington and Susquehanna Railroad Company had constructed a railroad, extending from the east shore of the Susquehanna River to the city of Wilmington, and the original "Philadelphia, Wilmington and Baltimore Railroad Company," of Pennsylvania, had, under and in pursuance of a transfer by the Wilmington and Susquehanna Railroad Company, made in accordance with the second section of an act of the general assembly of the State of Delaware, passed on the 13th day of January, 1837, entitled "A further supplement to an act, entitled 'An act to incorporate the Wilmington and Susquehanna Railroad Company,'" of its rights and privileges in the premises, constructed that portion of the railroad originally intended to have been constructed by the Wilmington and Susquehanna Railroad Company, which extended from the city of Wilmington to the divisional line between the States of Delaware and Pennsylvania, and had, under the powers conferred by its own charter, constructed a railroad from the said division-line to a point within the now corporate limits of the city of Philadelphia; that the railroads constructed by the said three companies formed a continnous line from a point
9 at or near the city of Baltimore in the State of Maryland, to a point at or near the city of Philadelphia in the State of Pennsylvania, excepting the distance between the eastern terminus of the railroad of the Baltimore and Port Deposit Railroad Company, on the western shore of the Susquehanna River, and the western terminus of the railroad of the Wilmington and Susquehanna Company, on the eastern shore of the same river, between which termini freight and passengers were transported across the river by a ferry-boat, belonging partly to the Baltimore and Port Deposit Railroad Company and partly

to the Wilmington and Susquehanna Railroad Company; that the line of railroad thus constructed by the divisional companies was inferior in structure and equipment to that which has since been built and maintained by the consolidated company, party defendant hereto; that the transportation business over the said line of railroad was comparatively small, and that the fact of the line being divided into three parts, each owned by a separate and distinct company, rendered it difficult to manage the said business in a manner satisfactory either to the public or to stockholders of the said companies.

Fourteenth. That, since the consolidation of the said three companies, the Philadelphia, Wilmington and Baltimore Railroad Company party hereto, defendant, has connected that portion of the aforesaid railroad line which lay to the westward of the Susquehanna River with that which lay to the eastward by a railroad bridge constructed at vast expense across the Susquehanna River, and has thus established and now maintains a continuous railroad route between the cities of Philadelphia and Baltimore; that it has expended immense sums of money in the purchase of land for dépot stations and other railroad purposes, in the erection of building and other structures thereon, in increasing the capacity of its road by the addition of new main tracks, sidings, turnouts, and other appurtenances, in providing an adequate equipment of rolling-stock and other personal property, and in carrying on efficiently and successfully the business of transporting freight and passengers from one point to another on the said railroad; that the railroad of the said company forms part of a great seaboard line of travel and transportation between the Northern and Southern States of this Union; that its termini are the great and populous cities of Philadelphia and Baltimore; that a vast number of passengers and tons of freight are carried thereon directly through the State of Delaware; that as many as 1,385,921 passengers and 235,930 tons of freight have been transported on the said railroad within a single year, and that the gross earnings of the business of a single year have exceeded $3,820,000; and that the capital stock of said company now consists of 186,088 shares of fully-paid stock, the par value of fifty dollars per share, although at the date of its formation it consisted of but forty-five thousand shares, including many forfeited shares, and shares of which instalments were due and unpaid.

Fifteenth. That, by the fourth section of an act of the general assembly of the State of Delaware, entitled "An act taxing railroad and canal companies in this State," passed the 8th day of April, 1869, it was enacted that every railroad company and every canal company incorporated by or under any law of the State of Delaware, and doing business within the said State, should, in addition to other taxes imposed by law, on the first day of July, next after the passage of the said act, and on the first day of July in each and every year thereafter, or within thirty days from such times, pay unto the state treasurer, for the use of the State, a tax of one-fourth of one per centum upon the actual cash value of every share of the capital stock of such company, and that it should be the duty of the president or treasurer of every such company, on the first day of July next succeeding the passage of the said act, and on the first day of July in each and every year thereafter, or within thirty days from such times, to furnish to the state treasurer a statement of the number of shares of the capital stock of such company, with an estimate and appraisement of the actual cash value of each share of such capital stock, and to verify such statement and appraisement in the manner prescribed in the second section of the

said act, viz, by oath or affirmation made and subscribed before some person who, according to the laws of the State where such affirmation was made, should be authorized to administer the same, and to forthwith pay over to the state treasurer, for the use of the State, the amount of tax for which said company was liable, under the provisions of the said section; it being provided, however, that where the line of
11 railroad or canal belonging to any company liable to the said tax lay partly in the State of Delaware and partly in an adjoining State or States, such company should only be required to pay the tax aforesaid on such number of the shares of its capital stock as should be in that proportion to the whole number of shares of such stock which the length of said railroad or canal within the limits of the State of Delaware should bear to the length of such railroad or canal; and that by the fifth section of the said act it was further enacted that, in case the president or treasurer of any railroad or canal company liable to the tax mentioned in the said fourth section, should neglect or refuse to furnish the statement of the number of shares of the capital stock of said company, with the estimate and appraisement of the actual cash value of each share thereof, verified as provided in the said fourth section of the said act, for a period of ten days after the said statement should be furnished, or the said tax should have become due and payable, it should be the duty of the state treasurer forthwith to give a written notice to one of the assessors of State taxes of such failure, and such assessor should, by all lawful means, inform himself as correctly as possible of the number of shares of the capital stock of said company's in default, and the actual cash value of each share thereof, and should assess upon such company the tax for which it was liable under the said fourth section, and should return such assessment to the state treasurer within twenty days from the receipt of the notice aforesaid; and that the state treasurer, upon the return to him of such assessment, should forthwith issue his warrant, with a duplicate of the said assessment annexed, to any collector of State taxes, authorizing and directing him to collect the tax mentioned in the said duplicate within twenty days from the date of such warrant; and that such collector should have all the powers for collecting the taxes aforesaid which, by the laws of the State of Delaware, were conferred upon the collectors of county taxes for the collection of county rates and levies.

Sixteenth. That on the second day of October, 1869, the president of the Philadelphia, Wilmington and Baltimore Railroad Company, in response to demands made by the treasurer of the State of Delaware, furnished to the said treasurer a statement, showing that the
12 number of shares of the capital of the said company, on the 30th day of June, 1869, was 186,088, and that the cash value of each share was $50, but accompanied the said statement with a protest that the said tax was illegal, because the shares of the capital stock of the company belonged to the holders thereof; that much the larger number of the said holders were neither citizens nor residents of Delaware, over whom or whose property the legislature of that State had no jurisdiction, and that the shares which would be taxable under the act in question greatly exceeded in number those held by citizens or residents of Delaware, and because, even assuming that the tax was chargeable, not on the property of the stockholders, but on the company, the legislation of the State of Delaware, under which the present consolidated Philadelphia, Wilmington and Baltimore Railroad Company was formed, both expressly and by implication, exempted it from taxation of that character; and the said president further stated that, for these and

other reasons, the company protested against being held liable to the said tax, and furnished the accompanying statement under the said protest.

Seventeenth. That on the 25th day of October, 1869, your orator addressed a written communication to the president of the said Philadelphia, Wilmington and Baltimore Railroad Company, claiming that the said tax was illegal, and that protection against the levy of it should be provided; that the said communication was submitted to the board of directors of the said company, but the said board of directors passed a resolution declaring that while they protested against the legality of the said tax, they declined to take the responsibility of interfering to prevent its collection.

Eighteenth. That the passage by the legislature of the State of Delaware of the act imposing the said tax was a violation of the contract between that State and the Philadelphia, Wilmington and Baltimore Railroad Company, party defendant hereto, under which that company was formed; that when the Delaware and Maryland Railroad Company of Maryland and the Wilmington and Susquehanna Railroad Company of Delaware were consolidated, a contract was made and entered into between the said consolidated company and the State of Delaware that the liability of the capital stock of the said company to taxation by the legislature of Delaware should be that provided for by the fourth
13 section of the act of the legislature of Delaware, passed on the 24th day of July, 1835, viz, a tax of one-quarter of one per cent. on the capital stock of four hundred thousand dollars of the original Wilmington and Susquehanna Company, and also that, with this exception, the capital stock of the consolidated company should be secured the same immunity from taxation which was secured to the capital stock of the Delaware and Maryland Railroad Company by the 19th section of the act of the general assembly of the State of Maryland, under and in pursuance of which that company was incorporated; that the exercise by the State of Delaware of the power of taxing the capital stock of the Philadelphia, Wilmington and Baltimore Railroad Company is inconsistent with the fair and reasonable enjoyment of the rights and privileges accorded to that company by the legislation of that State; that the existence of such a power would enable the State of Delaware, if so disposed, to annul entirely, or, at least, to render valueless, those very rights and privileges; that the capital stocks of the Maryland and Pennsylvania companies previous to and at the time of the consolidation of those companies with the Delaware company represented real and personal estate of great value, locally situated in Pennsylvania and Maryland, belonging to stockholders not domiciled in Delaware, and not in any manner or to any extent liable to taxation by the latter State; and that the contract between that State and the said Pennsylvania and Maryland companies, resulting from the acceptance by the former companies of the provisions of the legislation, under which the consolidated company was formed, neither by expression nor implication subjected the said capital stocks or the property which they represented to taxation by the State of Delaware; that the proviso in the said fourth section of the act of April 8th, 1869, limiting the taxability of the capital stock of the said company to "such number of the shares of its capital as will be in that proportion to the whole number of shares of such capital stock which the length of said railroad * * * within the limits of this State [Delaware] bears to the whole length of such railroad, * * *" does not render the act less objectionable in principle; that each and every share of the said capital stock repre-

sents property situated in Pennsylvania and Maryland to a much
14 larger extent than it represents property situated in the State of Delaware; that, practically and really, all the shares of the said capital stock are taxed when an assessment is laid upon any part of them; that while the entire length of the railroad of the Philadelphia, Wilmington and Baltimore Railroad Company, including a branch road in the State of Maryland, known as the Port Deposit Branch, is 99.74 miles, and 23.08 miles of the said road are in the State of Delaware. Yet the value of the property of the said company locally situated in the State of Delaware is much less than $\frac{23}{99}$ $\frac{08}{74}$ of its entire property; that the bridge across the Susquehanna River, in the State of Maryland, represents alone an expenditure exceeding $1,500,000; that the value of the depot and station grounds in the States of Pennsylvania and Maryland, with the buildings and structures thereon erected, much exceeds $\frac{7}{9}$ $\frac{6}{9}$ $\frac{66}{74}$ of the value of the entire depot and station property of the said company; that the capital stock of the said company represents large investments in the bonds and stocks of other incorporated companies, among others, an investment of over $485,000, in the stock and bonds of the Philadelphia and Baltimore Central Railroad Company, a corporation owning a railroad situate partly in Pennsylvania and partly in Maryland, and that for these and other reasons the apportionment of the capital stock provided for in the said act, is as a mode of ascertaining the value of the property of the said company in the State of Delaware, utterly inaccurate and deceptive; that the cash value of the shares of capital stock of any railroad company must necessarily depend upon the degree of success with which the business of the said company is managed; that the aggregate cash value of the shares may be much greater at one time than at another, although the cash value of its material property may remain unaltered; that a tax upon the cash value of the shares of the capital stock of a company is, so far as concerns the company, really a tax upon its business as well as upon the property employed in that business, and so far as the stockholders themselves are concerned, in view of their individual ownership of shares of stock, a tax upon personal property irrespective of the domicil or citizenship of the owner; that the Philadelphia, Wilmington and Baltimore Railroad Company is engaged in the business of transporting passengers and freight in a continuous course of
15 transportation from, into, and through the State of Delaware; that it engaged in that business under and in pursuance of a contract with the State of Delaware; that more than $\frac{367}{372}$ of the shares of its capital stock are owned by individuals who are neither citizens of Delaware, nor domiciled within its territory; and that the said act of the legislature of Delaware, passed on the 8th day of April, 1869, so far as it applies to the said company, and to the shares of its capital stock therein mentioned, is unconstitutional and void, as being in conflict with the clause of the Constitution of the United States which forbids any State passing a law impairing the obligation of a contract, and with the clause which reserves to Congress the power to regulate commerce among the several States, and is further unconstitutional and void, as taxing and obstructing the right of passage for citizens of the United States and their property into, from, or through the State of Delaware, and also as taxing personal property not locally situated in the State of Delaware, and belonging to citizens of the United States, who are not citizens of Delaware nor domiciled in that State.

Nineteenth. That the duty of the said company to its stockholders requires it to take all lawful means to resist the collection of the said

tax on capital stock, but that the said company refuses and neglects to comply with its said duty, and that your orator is apprehensive that the said company will either pay the said tax, or that, in case of non-payment, its property will be levied on and sold from time to time, as the said tax may fall due, and that thereby the value of your orator's shares of the stock of the said company may become impaired and depreciated; that, in fact, the defendant treasurer of the State of Delaware aforesaid, has issued to the said M. B. Ocheltree, collector of State taxes aforesaid, a warrant or order requiring him to collect the sum of $5,382.63, being a tax of one-quarter of one per cent. on the capital stock of the said company for 23.08 miles of railroad, and the said M. B. Ocheltree threatens to collect the said tax if it is not forthwith paid.

Twentieth. That by the first section of the aforesaid act of the general assembly of the State of Delaware, entitled "An act taxing railroad and canal companies in this State," approved the eighth day of April, A. D. 1869, it is provided as follows: "Be it enacted by the senate and house of representatives of the State of Delaware in
16 general assembly met, That all railroad and canal companies incorporated under the laws of this State, and doing business within the State, or which may hereafter be incorporated in this State, shall on the first day of January next, after the passage of this act, and on the first day of January in each and every year thereafter, in addition to the taxes now imposed upon such companies by the laws of this State, pay to the state treasurer for the use of the said State, a tax of three per centum upon the net earnings or income received by the said railroad or canal company from all sources during the preceding year: Provided, that where the line of railroad or canal belonging to any company liable to the said tax lies partly in this State and partly in an adjoining State or States, the part or share of such net earnings or income of such company only shall be subject to the said tax as will be in the proportion to the whole net earnings or income of such company which the length of said road or canal within the limits of this State bears to the whole length of such road or canal;" and that, by the second section of the said act, it is further provided that the president or treasurer of every company subject to the aforesaid act shall, upon the first of January next, or within thirty days thereafter, and on the first day of January in each and every year thereafter, or within thirty days from such times, furnish to the treasurer of the State of Delaware a full statement in writing, showing the net earnings or income of such company from all sources during the preceding year, and shall verify such statement by his oath or affirmation, made and subscribed before some person who, according to the laws of the State where such oath or affirmation is made, is authorized to administer the same, and shall forthwith pay over unto the treasurer of the said State of Delaware the tax for which the said company is liable under the aforesaid first section of the said act; and that in case the president or treasurer of any railroad or canal company liable to the said tax, shall neglect or refuse to furnish the statement of net earnings of said company, verified as aforesaid, to the treasurer of the State of Delaware, for a period of ten days after the same should have been furnished according to the provisions of the said section, or shall neglect or refuse to pay over to the state treasurer the tax aforesaid, for a period of ten days after the same shall have become due and payable, it shall be the duty of the state treasurer to estimate from the best information he can obtain, and to assess the amount of tax due from such company under the aforesaid section, and to issue his warrant with a duplicate of such

assessment annexed, to any collector of State taxes, authorizing and directing such collector to collect the said tax out of any property, real or personal, belonging to such company so in default, within twenty days from the date of such warrant; and that any collector to whom such warrant is directed shall have the same powers for collecting the tax mentioned in the duplicate accompanying the said warrant, that by the laws of the State of Delaware are conferred upon the collectors of county taxes for the collection of county rates and levies.

Twenty-first. That, by the third section of the act last aforesaid, it is further provided that every railroad company incorporated by this State and doing business within this State shall pay to the state treasurer, for the use of the State, on the first day of January next, or within thirty days thereafter, and on the first day of January in each and
17 every year thereafter, or within thirty days from such times, a tax of one hundred dollars for the use in the said State of Delaware of each locomotive belonging in whole or part to such company, and at any time during the preceding year used by said company within the said State of Delaware, and twenty-five dollars for the use in this State of each passenger-car belonging, in whole or part, to such company, and at any time during the preceding year used by said company within the said State, and ten dollars for the use in the said State of each freight-car of every description, and each truck belonging to such company, and at any time during the preceding year used by said company within the said State, and by the said section it is further provided that the president, treasurer, or superintendent of each railroad company, liable to the said tax, should on the first day of January, in each year, or within thirty days thereafter, furnish to the treasurer of the State of Delaware a statement, verified by oath or affirmation, of the number of locomotives, passenger-cars, freight-cars of every description, and trucks belonging to said company, and used or employed at any time during the preceding year within the said State, and shall forthwith pay over unto the state treasurer the tax for which such company is liable under the said section; and that in case of default for the period of ten days in furnishing the said statement, or paying the said tax, the treasurer of the State of Delaware shall give notice to one of the assessors of State taxes, who, thereupon, and within twenty days after such notice, shall inform himself by all lawful means of the number of locomotives, passenger and freight cars of every description, and trucks, belonging to such company so in default, and used by said company at any time during the preceding year within the said State, and shall assess said company with the tax for which said company is liable under the said section, and shall forthwith transmit such assessment to the treasurer of the said State, who shall, ten days after the receipt thereof, forward a duplicate of the said assessment to any collector of State taxes, accompanied by a warrant authorizing and directing such collector to collect the tax in the said duplicate mentioned out of any property, real or personal, belonging to such company so in default, within twenty days from the date of such warrant; and that any collector to whom such warrant is directed shall have the same powers for collecting the said tax that by the laws of the said State of Delaware are conferred upon the collectors of county taxes for the collection of county rates and levies; and by the said section it is further provided that the words truck or trucks, wherever they occur in the said act, shall be taken to mean a pair of trucks.

Twenty-second. That by the sixth section of the said act it is further provided that in case of default in paying any of the said taxes,

penalty of ten per cent. thereon shall be added by the collector to the said tax, and be collected with the same.

Twenty-third. That the law imposing the said tax upon the net earnings of the said company violates the contract made and entered into by and between the State of Delaware and the Philadelphia, Wilmington and Baltimore Railroad Company, as hereinbefore stated, and is in conflict with the clause of the Constitution of the United States
18 which forbids any State passing a law impairing the obligations of a contract, and that the said law, for reasons already mentioned in reference to the tax upon the capital stock of the said company, is in conflict with the clause of the Constitution of the United States which reserves to Congress the power to regulate commerce among the several States, and it is further unconstitutional and void, as taxing and obstructing the right of passage for citizens of the United States and their property into, from, or through the State of Delaware.

Twenty-fourth. That the locomotive-engines, passenger-cars, freight-cars, and trucks belonging to the said Philadelphia, Wilmington and Baltimore Railroad Company which were used in the State of Delaware during the year 1869, were, with some inconsiderable exceptions, used on the aforesaid railroad of the said company extending from the city of Philadelphia, in the State of Pennsylvania, through the State of Delaware to the city of Baltimore, in the State of Maryland, and for the purpose of transporting the persons and property of citizens of the United States and others in and by a continuous course of transportation through, from, and into the said State of Delaware; that the aforesaid section of the act of the general assembly of the State of Delaware, approved the 8th day of April, 1869, imposing a tax for the use in the State of Delaware of the locomotive-engines, passenger and freight cars, and trucks of the said company, conflicts with and derogates from the rights and privileges secured to the said company, by and under the contract made and entered into by and between the State of Delaware and the said company, as aforesaid; and is, therefore, in violation of the clause of the Constitution of the United States which forbids any State passing a law impairing the obligation of a contract, and that the said section is in violation of the clause of the Constitution of the United States which reserves to Congress the power to regulate commerce among the several States; and is further unconstitutional and void, as taxing and obstructing the right of passage for citizens of the United States and their property into, from, and through the State of Delaware.

Twenty-fifth. That, notwithstanding the premises, and the duty of the said Philadelphia, Wilmington and Baltimore Railroad Company to take all proper and lawful means to protect the property of the said company and the interests of the stockholders therein against all illegal demands, your orator charges and avers that, unless prevented by the injunction of this honorable court, the said company will furnish to the treasurer of the State of Delaware, for the purpose of assessment and taxation, the statement of net earnings and the statement of the number of locomotives, passenger-cars, freight-cars, and trucks, belonging to the said company and used during the year 1869, as required by the second and third sections of the aforesaid act of the general assembly of the State of Delaware, approved the eighth day of April, 1869, and that the said company will either pay the said taxes or permit their property to be levied on and sold for non-payment of the same, under and in pursuance of warrants issued for the collection of the same, as in the said act provided; or, should the said company omit to furnish the said statements, that the defendant, William J. Clark, treasurer of the

State of Delaware, will give notice of the said omission to one of
19 the assessors of State taxes of the said State, and thereupon the said taxes will be assessed and collected as in the said act provided without the said Philadelphia, Wilmington and Baltimore Railroad Company resorting to the proper legal measures to assert and maintain their rights and those of their stockholders in the premises; and this, although as your orator avers and charges, the said company are well satisfied that the provisions of the aforesaid act of assembly relating to the said taxes are unconstitutional and void. Your orator, therefore, being remediless by any proceeding at common law, needs equitable relief, as follows:

First. That it may be decreed that the said corporation, defendant, is not bound to pay the aforesaid taxes on shares of capital stock, net earnings, and the use of locomotives, passenger and freight cars, and trucks, and that the aforesaid act of the general assembly of the State of Delaware, so far as it imposes and provides for the assessment and collection of the said taxes, or any of them, is unconstitutional and void.

Second. That the said corporation, defendant, be restrained by injunction, preliminary until hearing, and perpetual thereafter, from furnishing to the treasurer of the State of Delaware statements of net earnings, and of the number of locomotives, passenger and freight cars, and trucks of the said company, used in the State of Delaware during the year 1869, as required by the said act, and from paying the said taxes on capital stock, net income, locomotives, passenger and freight cars, and trucks, or any of the said taxes.

Third. That the said defendant, William J. Clark, be restrained by injunction, preliminary until hearing, and perpetual thereafter, from giving notice to any assessor of State taxes of the State of Delaware, of any failure or omission of the said corporation, defendant, or its officers, to furnish the statements of the net earnings and of the number of locomotives, passenger and freight cars, and trucks of the said corporation, defendant, from issuing his warrant for the collection of said taxes on net earnings and the use of locomotives, passenger and freight cars, and trucks, and from proceeding in any way or manner to enforce the collection of the said taxes.

Fourth. Such other relief as to the court may seem fit.

May it please the court to grant unto your orater a writ of subpœna, directed to the said The Philadelphia, Wilmington and Baltimore Railroad Company, William J. Clark, and M. B. Ocheltree, commanding them to appear before the honorable court to answer this bill of complaint, and to abide the decree of the court.

GEO. C. GORDON,
Sol. for Compl't.

20 WILLIAM MINOT, JR.,
vs.
THE PHILADELPHIA, WILMINGTON AND BALTIMORE Railroad Company, William J. Clarke, and M. B. Ocheltree.

In the circuit court of the United States for the district of Delaware.
In equity.

WILLIAM MINOT, Jr., being duly , deposes and says:

I am the plaintiff in the above suit, a citizen of the United States, and a citizen of the State of Massachusetts, in which State I reside.

I am informed and believe that the Philadelphia, Wilmington and Baltimore Railroad Company, one of the above-named defendants, is a body corporate of the State of Delaware, and as such a citizen of that State; that William J. Clarke is treasurer and M. B. Ocheltree a collector of taxes of the State of Delaware, and that both these defendants are citizens of that State.

I am the holder of 1,600 shares of the capital stock of the said Philadelphia, Wilmington and Baltimore Railroad Company, of which shares one hundred and forty-six (146) are owned by me in my own right.

I am informed and believe that the Wilmington and Susquehanna Railroad Company of the State of Delaware was incorporated, as
21 in the bill of complaint in the above-named suit described; that it possessed all the rights, franchises, and privileges conferred by the several acts of the legislature of the State of Delaware relating to the said company which are mentioned in said bill, and that it was afterwards duly consolidated with the Delaware and Maryland Railroad Company, a corporation of the State of Maryland, under and in compliance with the provisions of the laws of the State of Delaware and Maryland relating to the said consolidation and in pursuance of the proceedings of a meeting of the stockholders of the two companies, duly convened and held.

I am informed and believe that the acts of the legislatures of Maryland and Delaware relating to the said two companies and to th*at* [eir] consolidation are correctly described in the said bill, and that the proceedings of the stockholders of [the] said [two] companies in reference to th*at* [eir] consolidation were duly certified and recorded according to law.

I am informed and believe that the corporation thus formed by the consolidation of the two companies aforesaid was known as the Wilmington and Susquehanna Railroad Company, and that it possessed and enjoyed all the rights, powers, and privileges conferred upon it by the acts of assembly in the said bill mentioned or referred to.

I am informed and believe that the authorized capital stock of the original Wilmington and Susquehanna Company consisted of
22 eight thousand shares, and that the tax of one-quarter of one per cent. imposed on the said capital stock by the fourth section of the act of the legislature of the State of Delaware, as stated in the said bill, has always been paid by the Philadelphia, Wilmington and Baltimore Railroad Company to the treasurer of the State of Delaware.

I am informed and believe that the Philadelphia, Wilmington and Baltimore Railroad Company, party defendant to the said bill, was formed by the union and consolidation of the *the* Wilmington and Susquehanna Railroad Company, the Baltimore and Port Deposit Railroad Company of Maryland, and the Philadelphia, Wilmington and Baltimore Rail road Company of Pennsylvania, by articles of union made and entered into between the said three companies, on the 5th day of February, 1838, and that all the averments in the said bill relating to the legislation of the States of Delaware, Maryland, and Pennsylvania, in reference to the said companies, respectively, and their union and consolidation, and to the aforesaid articles of union, are correct.

I am informed and believe that the averments in the said bill relating to the construction of railroads by the said three companies, respectively, prior to th*is* [eir] union and consolidation, are correct; and that the averments in reference to the 'struction an' equipment of the said roads,
23 and the difficulty of managing the business of transportation thereon, are also correct.

I am informed and believe that all the averments in the said bill re-

lating to the bridging of the Susquehanna River, the maintenance of a continuous railroad line between the cities of Philadelphia and Baltimore, the expenditure of large sums of money in the purchase of real estate, the improvement of the , and providing an equipment of rolling-stock by the Philadelphia, Wilmington and Baltimore Railroad Company, are correct.

I am informed and believe that great numbers of passengers and a large amount of freight are being constantly transported over the railroad of the said company in transit into, from, and through the State of Delaware, in and by a continuous course of transportation, and that the statements in the said bill relating to the number of passengers and tons of freight transported in a single year, and the gross receipt therefrom, are correct.

I am informed and believe that, in response to demands made by the treasurer of the State of Delaware, the president of the Philadelphia, Wilmington and Baltimore Railroad Company furnished the statement of the number of shares of capital stock, and the appraisement of the cash value of the same, which is referred to in the said bill, and that the said statement was accompanied by the protest also referred to.

24 I did address the communication mentioned in the said bill to the president of the said company; and I aminformed and believe that the said communication was submitted to the board of directors of the said company, and that their action was that described in the said bill of which I received a written notice.

I am informed and believe that the averments in the said bill relating to the real and personal estate of the Maryland and Pennsylvania companies prior to their consolidation with the Delaware company; to the fact of each share of stock of the consolidated P., W. & B. Company, representing property in Pennsylvania and Maryland to a greater extent than it represents property in Delaware; to the length of the entire road and the length of that portion of it in Delaware; to the comparative value of the Delaware property; to the expenditure on the Susquehanna bridge; the comparative value of the depot and station property of the company in Pennsylvania and Maryland; to the investments made in bonds and stock of other companies; to the inaccuracy of a comparison between the length of the road in Delaware and its entire length, as a test of the proportionate value of the property of the company in Delaware; to taking the cash value of shares of the capital stock as

25 the measure of the value of the property held by the corporation; and to the citizenship and residence of the owners of the capital stock of the Philadelphia, Wilmington and Baltimore Railroad Company, and the proportion of the shares of the said stock held by persons not citizens of, nor residents in, the State of Delaware, are correct.

I have reason to apprehend that the said company will either pay the tax on capital stock imposed by the act of the legislature of Delaware, passed on the 8th day of April, 1869—which is recited in the said bill—or that its property will be levied on and sold from time to time to secure the collection of the said tax as it falls due, and that the value of my shares of the stock of the said company will be thereby depreciated.

And I have been informed and believe that the defendant William J. Clarke, treasurer of the State *of the State* of Delaware, has issued a warrant to the defendant M. B. Ocheltree, requiring the latter to collect the sum of $5,384.63 from the said company, that sum being one-quarter of one per cent. on the capital stock of the company for 23.08 miles of railroad in Delaware, with an addition of a penalty of ten per cent.

W'M MINOT, JR.

UNITED STATES OF AMERICA,
26 *District of Mass., ss:*

Subscribed and sworn to this 15 day of November, 1869, by the above-named William Minot, jr., before me.

[SEAL.] WINSLOW WARREN, JR.,
Comm'r of U. S. Circ't Ct. for Dist. of Mass.

27 NOVEMBER 19TH, 1869.

Same day a subpœna of the United States, commanding the said defendants to appear and answer said bill of complaint issued to the United States marshal, of which the following is a copy, to wit:

Subpœna.

UNITED STATES OF AMERICA,
District of Delaware, ss:

WILLIAM MINOT, J'R, A CITIZEN OF THE STATE of Massachusetts,
vs.
THE PHILADELPHIA, WILMINGTON AND BALTIMORE Railroad Company, a body corporate of the State of Delaware, by the law of that State, a citizen of the State of Delaware, and William J. Clarke and M. B. Ocheltree, citizens of the State of Delaware. } In equity.

The President of the United States to the Philadelphia, Wilmington and Baltimore Railroad Company, a body corporate of the State of Delaware, by the law of that State a citizen of the State of Delaware, and William J. Clarke and M. B. Ocheltree, citizens of the State of Delaware, greeting:

For certain causes offered before the honorable the circuit
28 court of the United States of America for the district of Delaware, we command and strictly enjoin you that, laying aside all manner of business, and notwithstanding any excuse whatever, you personally be and appear before the said court, at Wilmington, in said district, on Monday, the third day of January next, then and there to make full, true, direct, and perfect answer to a bill of complaint exhibited against you by William Minot, j'r, and further to do and receive what the said court in that behalf shall consider to be done; and this in no wise omit, under penalty of five hundred dollars.

{ SEAL OF CIRCUIT COURT U. S. DIS. OF DEL. } Witness the Honorable S. P. Chase, Chief Justice of our Supreme Court, at Wilmington, in the district aforesaid, the nineteenth day of November, in the year of our Lord one thousand eight hundred and sixty-nine.

CHA'S G. RUMFORD,
Clk U. S. Circuit Court for Dist. of Del.

NOTE.—The above defendants shall enter their appearance in the above suit, in the clerk's office, on or before the third day of January A. D. 1870; otherwise the bill may be taken pro confesso.

CHA'S G. RUMFORD, *Clk.*

JANUARY 3D, A. D., 1870.

Same day the marshal returns on said writ as follows, to wit:

29 *Marshal's return.*

Served personally, by leaving a copy with the president of the Philadelphia, Wilmington and Baltimore Railroad Company and William J. Clarke and M. B. Ocheltree.

JOHN M. DUNN,
U. S. Marshal Delaware Dist.

And thereupon, upon the same day, (January 3d, A. D. 1870,) the defendants "The Philadelphia, Wilmington and Baltimore Railroad Company," appear in court here, by Charles B. Love, esquire, their solicitor, and, upon his application, it is ordered by the court that a rule be entered for said defendants to file their answer by the first Monday in April next.

And afterwards, to wit, on the twentieth day of June, A. D. 1871, the defendants William J. Clarke and M. B. Ocheltree, appear and file their joint and several answers to said complainant's bill of complaint, in the words following, to wit:

Answer.

30 In the circuit court of the United States for the district of Delaware.

WILLIAM MINOT, J'R,
vs.
THE PHILADELPHIA, WILMINGTON AND BALTIMORE Railroad Company, et al.

The joint and several answer of William J. Clarke, treasurer of the State of Delaware, and M. B. Ocheltree, defendants to the bill of complaint of William Minot, j'r, complainant, against The Philadelphia, Wilmington and Baltimore Railroad Company and William J. Clarke and M. B. Ocheltree, defendants.

These defendants, now and at all times hereafter, saving and reserving unto themselves all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as these defendants are advised is or are material or necessary for them to make answer unto, these defendants, answering, say:

First. That these defendants have no knowledge or information, save from the complainant's bill of complaint, nor can they, or either of them, answeras to their belief or otherwise, whether the complainant is or is not a citizen of the United States or of the State of Massachusetts, or whether the said complainant is or is not the owner of any shares of the capital stock of the Philadelphia, Wilmington and Baltimore Railroad
31 Company, or is or is not entitled to require that the rights and franchises of said corporation shall be duly maintained and defended, and that its money or other property shall not be appropriated to unfounded or illegal demands, but whether such be the fact or not, these defendants insist that no such illegal or unfounded demands have at any time been made by these defendants, or either of them, of or from said corporation, or any of its officers or agents.

UNITED STATES OF AMERICA,
26 *District of Mass., ss:*

Subscribed and sworn to this 15 day of November, 1869, by the above-named William Minot, jr., before me.

[SEAL.] WINSLOW WARREN, JR.,
Comm'r of U. S. Circ't Ct. for Dist. of Mass.

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UNITED STATES OF AMERICA,
District of Delaware, ss:

WILLIAM MINOT, J'R, A CITIZEN OF THE STATE of Massachusetts,
vs.
THE PHILADELPHIA, WILMINGTON AND BALTIMORE Railroad Company, a body corporate of the State of Delaware, by the law of that State, a citizen of the State of Delaware, and William J. Clarke and M. B. Ocheltree, citizens of the State of Delaware. } In equity.

The President of the United States to the Philadelphia, Wilmington and Baltimore Railroad Company, a body corporate of the State of Delaware, by the law of that State a citizen of the State of Delaware, and William J. Clarke and M. B. Ocheltree, citizens of the State of Delaware, greeting:

For certain causes offered before the honorable the circuit
28 court of the United States of America for the district of Delaware, we command and strictly enjoin you that, laying aside all manner of business, and notwithstanding any excuse whatever, you personally be and appear before the said court, at Wilmington, in said district, on Monday, the third day of January next, then and there to make full, true, direct, and perfect answer to a bill of complaint exhibited against you by William Minot, j'r, and further to do and receive what the said court in that behalf shall consider to be done; and this in no wise omit, under penalty of five hundred dollars.

{SEAL OF CIRCUIT COURT U. S. DIS. OF DEL.} Witness the Honorable S. P. Chase, Chief Justice of our Supreme Court, at Wilmington, in the district aforesaid, the nineteenth day of November, in the year of our Lord one thousand eight hundred and sixty-nine.

CHA'S G. RUMFORD,
Clk U. S. Circuit Court for Dist. of Del.

NOTE.—The above defendants shall enter their appearance in the above suit, in the clerk's office, on or before the third day of January A. D. 1870; otherwise the bill may be taken pro confesso.

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Served personally, by leaving a copy with the president of the Philadelphia, Wilmington and Baltimore Railroad Company and William J. Clarke and M. B. Ocheltree.

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And afterwards, to wit, on the twentieth day of June, A. D. 1871, the defendants William J. Clarke and M. B. Ocheltree, appear and file their joint and several answers to said complainant's bill of complaint, in the words following, to wit:

Answer.

30 In the circuit court of the United States for the district of Delaware.

WILLIAM MINOT, J'R,
vs.
THE PHILADELPHIA, WILMINGTON AND BALTIMORE Railroad Company, et al.

The joint and several answer of William J. Clarke, treasurer of the State of Delaware, and M. B. Ocheltree, defendants to the bill of complaint of William Minot, j'r, complainant, against The Philadelphia, Wilmington and Baltimore Railroad Company and William J. Clarke and M. B. Ocheltree, defendants.

These defendants, now and at all times hereafter, saving and reserving unto themselves all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said bill of complaint contained, for answer thereunto, or unto so much or such parts thereof as these defendants are advised is or are material or necessary for them to make answer unto, these defendants, answering, say:

First. That these defendants have no knowledge or information, save from the complainant's bill of complaint, nor can they, or either of them, answeras to their belief or otherwise, whether the complainant is or is not a citizen of the United States or of the State of Massachusetts, or whether the said complainant is or is not the owner of any shares of the capital stock of the Philadelphia, Wilmington and Baltimore Railroad
31 Company, or is or is not entitled to require that the rights and franchises of said corporation shall be duly maintained and defended, and that its money or other property shall not be appropriated to unfounded or illegal demands, but whether such be the fact or not, these defendants insist that no such illegal or unfounded demands have at any time been made by these defendants, or either of them, of or from said corporation, or any of its officers or agents.

Second. These defendants admit that the Philadelphia, Wilmington and Baltimore Railroad Company is a body corporate of the State of Delaware, under the laws of that State, and that William J. Clarke, one of these defendants, is treasurer of said State, and that M. B. Ocheltree, one of these defendants, is one of the collectors of State taxes of said State of Delaware, and that these defendants are both citizens of the State of Delaware aforesaid.

Third. These defendants, further answering, admit that under an act of the general assembly of the State of Delaware, entitled "An act to incorporate the Wilmington and Susquehanna Railroad Company," passed on the 18th day of January, A. D. 1832, and a supplement thereunto, enacted on the 26th day of January, 1835, entitled "A supplement to the act entitled 'An act to incorporate the Wilmington and Susquehanna Railroad Company,'" there was created and established a corporation of the State of Delaware by the name and title of the Wilmington and Susquehanna Railroad Company, with the rights, privileges and franchises by the said acts conferred, and, among others, the power to construct a railroad as mentioned and specified in the third paragraph of the complainant's bill of complaint.

Fourth. These defendants, further answering, admit that under the provision of an act of the general assembly of the State of Delaware, entitled "A further supplement to an act entitled 'An act to incorporate the Wilmington and Susquehanna Railroad Company,'" passed on the 24th July, 1835, and an act of the general assembly of the State of Maryland entiled "A further supplement to the act entitled 'An act to incorporate the Maryland and Delaware Railroad Company,'" passed at the December session, 1835, the said Wilmington and Susquehanna Railroad Company of the State of Delaware was united with the
32 Maryland and Delaware Railroad Company of the State of Maryland, and that the capital stock of the two companies was consolidated, and said two companies formed and constituted one body politic and corporate by the name and style of the Wilmington and Susquehanna Railroad Company.

Fifth. These defendants, further answering, admit that, by the first section of the act of the general assembly of the State of Delaware entitled "A further supplement to an act entitled 'An act to incorporate the Wilmington and Susquehanna Railroad Company,'" passed on the 24th day of July, 1835, it was provided that the holders of the stock of the said railroad company, so enacted as aforesaid, shall hold, possess, and enjoy all the property, rights, and privileges, and exercise all the powers granted to and vested in the said railroad company, or either of them, by said law, or any other law of the States of Delaware and Maryland, and that the said first section of the act of the general assembly of the State of Delaware was ratified and adopted by the legislature of Maryland, as specified in the fifth paragraph of said bill of complaint, and that the authority, privileges, and powers conferred by said section was granted to the said companies, and the Wilmington and Susquehanna Railroad Company, when under the said name, the two companies aforesaid should become united; but these defendants positively deny that any exemption from liability to taxation by the said State of Delaware was thereby, or in any manner whatever, granted or intended to be granted to the said company, or either of them, or to the said company when they should become united, and the defendants for greater certainty refer to the acts aforesaid, and all the provisions thereof, and crave leave to make the said acts of the said State of Delaware a part of this answer, as fully as if the same were herein recited and set forth at large.

Sixth. These defendants, further answering, admit that the original Wilmington and Susquehanna Railroad Company was authorized by its charter to issue eight thousand shares of capital stock of the par value of fifty dollars per share, and that under the fourth section of the act of the general assembly of the State of Delaware, passed July 24th, 1835, a tax of one-quarter of one per cent. on four hundred thousand dollars of said capital stock, payable semi-annually, on the first days of January and July, in each and every year, was imposed on said company. But they insist that there was not in said original act of
33 incorporation of said company any express limitation upon the power of the company to issue a greater number of shares of capital stock if the company so desired, and that the nominal tax imposed by the said fourth section of the aforesaid act of July 24th, 1835, was imposed by the legislative authority of the State in the due exercise of its powers of taxing persons and property within the jurisdiction of the State, and was not intended or understood at the time, either by the legislature or the company, as exhausting the power of the legislature in the exercise of the taxing power over said company, and that no reservation of the right of the State to impose additional taxation upon said company in the act aforesaid was necessary, as the power so to do was and is necessarily inherent in the State, and of which she could only be divested by an express contract of exemption granted upon a valid consideration. And these defendants further insist that the right of the State to impose further or additional taxation cannot be denied or questioned, in the absence of any express grant of exemption, and more especially as by the second section of the original act of incorporation of the original Wilmington and Susquehanna Railroad Company, it is expressly provided, that nothing in said act contained should be considered as giving to the said company any liberties, privileges, or franchises, but such as are necessary or incidental to the making and proper management of the railroad thereby authorized to be constructed.

Seventh. These defendants, further answering, deny absolutely and unqualifiedly that the acceptance of the provisions of the act of July 24th, 1835, of the State of Delaware, and the corresponding act of December session, 1835, of the State of Maryland, by the stockholders of the original Wilmington and Susquehanna Railroad Company, and of the Delaware and Maryland Railroad Company, created a contract between the State of Delaware and the consolidated company, which by implication precluded the said State from taxing the capital stock of said company, except as provided in the fourth section of the act of July 24th, 1835. On the contrary, these defendants insist that the said act of July 24th, 1835, was an enabling act to authorize the consolidation of the two companies that desired to unite for the mutual benefit of the stockholders, and was accepted by the stockholders of said companies, because of the advantages and benefits which such con-
34 solidation would confer upon them, and without any consideration given or secured by said companies, or either of them, to the State of Delaware therefor, either directly or indirectly, and that the acceptance by the said companies of a valuable boon conferred upon them without consideration cannot possibly be tortured into a contract of exemption from taxation, by implication or otherwise; and these defendants deny that any contract of exemption of the shares of capital stock from taxation by the State of Delaware exists or is secured to the consolidated company by reason of any provision contained in any law of the State of Maryland incorporating the Delaware and Maryland

Railroad Company, or under or by virtue of any law of this State, incorporating or applying to any railroad company now constituting a part of the Philadelphia, Wilmington and Baltimore Railroad Company.

Eighth. These defendants have no knowledge or information otherwise than from the complainant's bill of complaint, in reference to any articles of union and consolidation entered into by and between the Wilmington and Susquehanna Railroad Company, the Baltimore and Port Deposit Railroad Company, and the Philadelphia, Wilmington and Baltimore Railroad Company, by which the said three corporations were united and merged into one body corporate under the name and style of the Philadelphia, Wilmington and Baltimore Railroad Company, nor of any arrangements between said companies in reference to the common stock of said consolidated company, or how many shares, if any, were awarded to the stockholders of either of the said three companies, or the estimated value of the stock so awarded, nor can they properly express any belief in reference to the same. But they aver and insist that the State of Delaware cannot be deprived of her inherent right to tax property or persons, natural or artificial, within her borders, in consequence of any arrangement or agreement to which she is not a party.

Ninth. These defendants admit that the Baltimore and Port Deposit Railroad Company was a corporation created under an act of the general assembly of the State of Maryland, mentioned and specified in the tenth paragraph of the complainant's bill of complaint, and that the Philadelphia, Wilmington and Baltimore Railroad Company was originally incorporated as set forth and recited in the eleventh paragraph of said bill of complaint, and that the said last-mentioned corporation
35 was authorized to construct and maintain a railroad from the City of Philadelphia to the boundary line of the State of Delaware, and possessed all other franchises, rights, and privileges conferred by the said original act of incorporation and the supplements thereto.

Tenth. These defendants admit that the union and consolidation of the said three companies, by which the Philadelphia, Wilmington and Baltimore Railroad Company was formed, was authorized by the acts of the general assemblies of the States of Delaware, Maryland, and Pennsylvania, respectively, referred to and mentioned in the twelfth paragraph of the complainant's bill of complaint; but they do not admit, on the contrary they deny, that any provision of said acts of assembly, or any other law of this State, or either of the States aforesaid, has deprived, or was intended to deprive, or can reasonably or justly be construed to deprive the State of Delaware of her power as a State to levy and collect such taxes upon all persons, natural and artificial, and all property within her jurisdiction in accordance with the provisions of her constitution, and not forbidden by the Federal Constitution, as her legislature should deem proper, and under this power so essential for the maintenance of her government, the said corporation, created by and existing under her laws, the recipient of valuable franchises, and enjoying the protection of her laws in the acquisition of the great wealth which has enured to it from the exercise of those franchises, was lawfully bound, in duty and good conscience, to pay into the State's treasury such contribution towards defraying the expenses of the State government as by this legislature should be declared just in consideration of the franchises so granted and protection extended as aforesaid. Nor can the relinquishment of such power of taxation by a State ever be presumed in the absence of express stipulations to such an effect.

Eleventh. These defendants admit that, prior to the consolidation of the said three companies mentioned in the thirteenth paragraph of the complainant's bill of complaint, the said several companies had respectively constructed the several railroads mentioned in said paragraph, and the said railroads so constructed by said companies formed a continuous line from a point at or near the city of Philadelphia to a point at or near the city of Baltimore, except as mentioned in
36 said paragraph, and that the respective roads constructed by the said divisional companies were inferior to the present road owned and operated by the consolidated company, but whether the transportation business over the said line was small or not, or what cause affected the said business of the road, these defendants have no knowledge or information, except from said bill of complaint, and can express no belief in reference thereto; but if such were the fact, these defendants insist that no increase of business secured by valuable privileges granted by the State of Delaware can possibly exonerate said consolidated company from the obligation to bear a just proportion of the public burden, and to share with the people of the State the burden of taxation necessary to maintain a proper State government for the protection of the rights of persons and property within the State.

Twelfth. These defendants are informed and believe it to be true that, since the consolidation of the three companies aforesaid, the said consolidated company has constructed a railroad bridge across the Susquehanna River, at a point designated in the fourteenth paragraph of said bill of complaint, and by means thereof have connected the parts of their railroad lying on each side of said river, whereby a continuous line of railroad exists between the said cities of Baltimore and Philadelphia; and also that the construction of said bridge involved considerable expense, but to what amount these defendants have no means of knowing, nor have they any knowledge or information in reference to the sums of money expended by said company for any or all the objects and purposes enumerated in the said fourteenth paragraph of said bill of complaint, nor can they express any belief in reference thereto otherwise than from the statement in said bill of complaint contained; neither can these defendants, from any knowledge or information which they possess, express any belief in regard to the efficiency or success with which said company has conducted its business of transporting freight and passengers over their road, but are willing to admit, from the statements of the complainant in said bill of complaint in that regard, that the business of the company has been efficiently and successfully conducted, and that said railroad forms a part of one line of travel and transportation whereby persons on the seaboard, or in other portions of the country, may avail themselves, if they so desire, in going themselves or in sending their property from one section of the
37 country to another, and these defendants are willing to admit that a vast number of passengers and tons of freight are carried over said road through the State of Delaware, but these defendants have no means of knowing, save from the complainant's bill of complaint, of the amount of business done by said company in any year, or of the gross earnings of said company therein, nor of the number of shares of capital stock of said company at the present time, or at any time previous, nor can they express any belief in reference to the same; nevertheless, assuming the statements of the complainants in reference to the improvements of said road and the expenditures for the purposes mentioned therein, and the amount of business done by said company to be true, they aver that the tax imposed on said company by the laws

of the State of Delaware, called in question by the said bill, are not at all disproportionate to the benefit conferred on said company by the valuable franchise granted to it by said State, by reason whereof the said company has been enabled to realize the means for the vast expenditures and improvements to which the complainant refers in his said bill of complaint.

Thirteenth. These defendants admit it to be true that there was passed by the general assembly of the State of Delaware, on the 8th day of April, 1869, an act entitled "An act taxing railroad and canal companies in this State," and that the fourth section of said act is substantially set forth in the fifteenth paragraph of said complainant's bill of complaint, and William J. Clarke, one of these defendants, further admits it to be true, and M. B. Ocheltree, from information received from said William J. Clarke, admits that he believes it to be true, that the president of the Philadelphia, Wilmington and Baltimore Railroad Company, on or about the second day of October, 1869, furnished to the said state treasurer of Delaware a statement showing that the number of shares of the capital stock of said company, on the 30th day of June, 1869, was 186,088, and that the cash value of each share was $50, and accompanied said statement with his protest against the payment of the tax imposed; but the reasons assigned in said protest, except the alleged illegality of the tax, these defendants do not now remember, as in the discharge of their respective official duties they were not to be influenced by the opinions or protest of the said president of said company. While these defendants admit the receipt of the statement aforesaid by the treasurer of Delaware, under the said protest of the
38 president of said company, they do not admit the truth of the allegation contained in said protest; but, on the contrary, deny that there was any valid reason for the refusal of said company to comply with the law of the State of Delaware, and insist that it ought, as a corporation created by and existing under the laws of said State, and protected in its just rights and property by her laws, to have yielded implicit obedience to the mandate of the sovereign power that gave to said corporation its existence, and by whose fostering care and protection its property has been rendered secure and valuable, and these defendants insist the more especially upon the obligation of said corporation to pay the tax imposed by the said act of the general assembly of the State, because they are informed and believe, and here charge, that under the allegation that they were to be compelled to pay the taxes imposed by the said laws, the said company has, since the enactment of the said laws, collected from the citizens of Delaware, in addition to the previous regular and usual rates of freight and transportation, large sums of money, far in excess of the total amount of taxes due from the said company under the said laws, and such collections were made by the said company with the public avowal of their agents, that they were made in consequence of the imposition by the State of the said taxes.

Fourteenth. These defendants, further answering, say that they are informed and believe, and here allege that the action of the said complainant was taken in collusion with the said company with the design and intent to give this honorable court jurisdiction of this cause, and thereby oust the jurisdiction of the courts of Delaware, and that any alleged communications between the said complainant and the said company respecting the said State laws and taxes, were made under the advice and suggestion of the legal counsel of the said company, and that the action of the said company has been in accordance therewith.

Fifteenth. These defendants, further answering, deny that the passage by the legislature of the State of Delaware of the aforesaid act entitled "An act taxing railroad and canal companies in this State," passed the 8th day of April, 1869, violated any contract between said State and the Philadelphia, Wilmington and Baltimore Railroad Company; and they further deny that the provisions of the fourth section of the act of the legislature of Delaware, passed on the 24th day
39 of July, 1835, imposing a tax of one-quarter of one per cent. on the capital stock of the Wilmington and Susquehanna Railroad Company created any contract between said State and said company limiting the liabllity of said company from further and future taxation by the legislature of this State; on the contrary, they insist that the tax imposed by said section was never intended by said legislature to restrict the legislative power of the State or limit the liability of said company from such future taxation as the legislature from time to time might see proper to impose, nor can these defendants conceive upon what just or legal principles the complainant can insist that the immunity enjoyed by said company from taxation (except the nominal tax imposed by the fourth section of the law of 1835,) can be construed into an exemption from further taxation, or can in any manner justify a refusal on the part of said company to comply with the requirements of the law of April 8th, 1869; and these defendants further insist that nothing contained in the law of July the 24th, 1835, or of any of the laws of this State, expressly or by implication, exempts the said company from liability to taxation; and they further deny that the exercise by the State of Delaware of the power of taxing the capital stock of said company in the manner provided by the aforesaid act of April the 8th, 1869, is inconsistent with the rights and privileges secured to the said company by their act of incorporation or any other law of said State of Delaware, and they deny that the existence of such a power in the State puts in jeopardy any rights or privileges of said company, or is likely to be exercised in such manner as to annul or render valueless any of those rights or privileges, nor can they appreciate the force of any argument that seeks to divest a sovereign State of a power essential to her very existence, because of an unwarrantable apprehension that it might possibly be exercised to the prejudice of one of her own corporations. These defendants have no knowledge or information, save from the complainant's bill of complaint, in reference to the capital stock of the Maryland and Pennsylvania companies previous to or at the time of the consolidation of said companies with the Delaware company, or of the property it represented, or its value or location, or in reference to the domicil of the holders of such capital stock, and cannot express any belief in reference to either of those matters. These defendants repeat and deny that any contract exempting from liability any property within the limits of the State of Delaware exists
40 between the said State and the aforesaid Pennsylvania and Maryland companies resulting from the acceptance by said companies of the provisions of the law of said State, enabling said companies to consolidate with the said Delaware company, or that any such contract exists from any other cause whatsoever. These defendants have no knowledge or information, save from the said bill of complaint, in reference to the length of the railroad of said Philadelphia, Wilmington and Baltimore Railroad Company, or the lengths of the parts thereof in either of the States through which it passes, or the value of the property of said company locally situated in the State of Delaware, or within the States of Pennsylvania or Maryland, or of the cost of the bridge of

said company across the Susquehanna River, or of any of the investments of said company, and can express no belief in reference to these matters. But they insist that the proviso contained in the fourth section of the aforesaid act of April 8th, 1869, limiting the taxability of the capital stock of said company to such number of the shares of its capital as will be in that proportion to the whole number of shares of such capital stock which the length of said railroad within said State of Delaware bears to the length of the whole railroad, is a just and equitable mode of ascertaining the number of shares of stock properly taxable by said State, and is neither inaccurate nor deceptive; and they further insist that whether this be so or not, it is the mode of assessment prescribed by the legislative will of the State, and which can only be changed or inquired into by the power that ordained it. And these defendants deny that the aforesaid act of the legislature of the State of Delaware, passed April the 8th, 1869, so far as it applies to said company, and to the shares of its capital stock, is unconstitutional and void, or that said act is in conflict with any provision of the Constitution of the United States; and they further deny that said act of the legislature of the State of Delaware either taxes or obstructs the right of passage for citizens of the United States and their property into, from, or through said State, or that said act taxes property locally situated outside the jurisdiction of said State, or is, from any cause whatsoever unconstitutional and void; on the contrary, they aver that every provision of the said law of the 8th of April, 1869, is constitutional and of binding force and authority, enacted by the general assembly of Delaware in no spirit of hostility to any of the corporations of the State, but in the rightful exercise of the legislative power inherent in the said State and essential to the existence of her government.

41 Sixteenth. These defendants, further answering, say that the treasurer of the State of Delaware, one of these defendants, in compliance with this duty under the law, issued a warrant or order to M. B. Ocheltree, one of the collectors of State taxes, also one of these defendants, requiring him to collect the sum of $5,382.63, being a tax assessed upon the Philadelphia, Wilmington and Baltimore Railroad Company upon the aforesaid statement furnished by the president of said company to said state treasurer under the fourth section of the act of the legislature of Delaware, passed April the 8th, 1869, and they insist that there was no duty or obligation resting on said company to its stockholders to resist the payment of said tax; but, on the contrary, the duty of said company was and is to obey the law of the State and to pay the tax imposed by the rightful authority.

Seventeenth. These defendants, further answering, admit that the provisions of the first, second, and third sections of the aforesaid act of the legislature of Delaware, pased April the 8th, 1869, are in substance set forth in the twentieth and twenty-first paragraphs of the complainant's bill of complaint, and that by the sixth section of said act a penalty of ten per cent. is provided in addition to the taxes imposed by said act for default in the payment of the same, as stated in said bill of complaint, and these defendants crave leave to refer to said act of April the 8th, 1869, and make the same a part of this their answer to said bill of complaint.

Eighteenth. These defendants, further answering, deny that the law of the State of Delaware aforesaid, imposing the said tax upon the net earnings of the said company, violates any contract made and entered into between the said State and said Philadelphia, Wilmington and Baltimore Railroad Company, and they also deny that the said law is in

conflict with the clause of the Constitution of the United States which forbids any State from passing a law impairing the obligation of contracts, because they aver that no contract between said State and said company exists which prohibits the imposition of the tax aforesaid; and they further deny that said law is in conflict with the clause of the Constituion of the United States which reserves to Congress the power to regulate commerce among the States, or is in any other respect, or for any other reason, unconstitutional and void; and they deny that said law in any manner taxes and obstructs the right of passage for citizens and their property into, from, or through the State of Delaware.

42 Nineteenth. These defendants, further answering, say that they have no knowledge or information save from the said bill of complaint in reference to the number of locomotive-engines, passenger-cars, freight-cars, and trucks belonging to the Philadelphia, Wilmington, and Baltimore Railroad Company which were used in the State of Delaware, but they believe from the length of the Delaware Railroad, operated by said Philadelphia, Wilmington and Baltimore Railroad Company, and in which said last-mentioned company own a majority of the stock, and upon which a large business is done in transporting passengers and freight, that a very large number of locomotive-engines, passenger-cars, freight-cars, and trucks are required to do the business of said company furnished by the citizens of the State of Delaware, but these defendants cannot say what proportion of these may also at times be engaged in transporting passengers and freight over that part of the road of said company through the State of Delaware from Philadelphia to Baltimore; and these defendants deny that the tax imposed by the law of the State of Delaware upon said company for the use, in the said State, of its locomotive-engines, passenger and freight cars, and trucks, conflicts with and derrogates from the rights and privileges of said company under any contract between said State of Delaware and said company, or is in violation of the clause of the Constitution of the United States denying to the States the right to pass any law impairing the obligation of contracts, or of the clause of said Constitution which reserves to Congress the power to regulate commerce, or that the aforesaid law of the State of Delaware of April 8th, 1869, taxes or in any manner obstructs the right of passage for citizens of the United States and their property into, from, and through said State of Delaware.

Twentieth. These defendants, further answering, deny that any duty to its stockholders required the Philadelphia, Wilmington, and Baltimore Railroad Company to resist the payment of the taxes imposed by the aforesaid law of the State of Delaware, passed April the 8th, 1869; but, on the contrary, they insist that said company ought to have paid the same promptly as they became due, and in no sense to have connived at, promoted, or encouraged any interference by the complainant with the discharge of a duty so obviously just and binding both at law and in equity. These defendants cannot say from any knowledge or in-

43 formation which they possess, and can express no belief upon the matter, whether said company, but for the interference of complainant, would have complied with said law and furnished to the state treasurer of Delaware the statements required to be furnished of the amount of net earnings of said company, and the number of locomotives, passenger-cars, freight-cars, and trucks belonging to said company, and used during the year 1869 within said State, but they aver that the said company ought so to have done; nor can these defendants, from any knowledge or information they possess, say whether said com-

pany, but for the interference of the complainant, would have paid the said taxes imposed by said law as they ought to have done, but they may be allowed to express their belief that the interference by said complainant with the discharge of its duty by the said company was made with the full knowledge, consent, and approbation of the president and directors of said company, if not at their instance and request; and these defendants further say that, but for the injunction of this honorable court it would have become their duty upon the default of the said company, either in furnishing the statements or in paying the taxes aforesaid imposed by said act of the legislature of Delaware, passed April 8th, 1869, to have proceeded to collect the amount of such taxes properly chargeable to said company under the law aforesaid in the manner there prescribed. And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are by the said bill charged, without this, that there is any other matter, cause or thing in the complainant's said bill of complaint contained, material or necessary for these defendants to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided, or denied, is true, to the knowledge or belief of these defendants; all which matters and things these defendants are ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

W. J. CLARKE,
State Treas.
M. B. OCHELTREE.

CHA'S B. LOVE, *Att'y Gen.*
T. F. BAYARD,
ELI SAULSBURY,
Solicitors.

44 UNITED STATES OF AMERICA,
District of Delaware, ss:

On the twentieth day of June, in the year of our Lord one thousand eight hundred and seventy, before me personally appeared William J. Clarke, treasurer of the State of Delaware, and Maxwell B. Ocheltree, and respectively made oath that they have read the above and foregoing answer, printed on sixteen pages, and know the contents thereof; that the same is true of their own knowledge, except as to matters which are therein stated to be on their information and belief, and as to those matters they believe them to be true.

W. J. CLARKE,
State Trea.
M. B. OCHELTREE.

Sworn and subscribed before me this 20th day of June, 1870.

{ SEAL U. S. C. C. DIS. OF DEL. } CHA S G. RUMFORD,
Clerk Circuit Court U. S., District of Delaware.

Afterwards, to wit, on the twenty-sixth day of October, A. D. 1871, the following statement of facts, agreed upon by counsel, was filed in this cause.

45 STATEMENT OF FACTS.

In the circuit court of the United States for the District of Delaware

WILLIAM MINOT, JR.,
vs.
THE PHILADELPHIA, WILMINGTON & BALTIMORE R. R. Co. et al. } In equity.

It is hereby agreed by and between counsel that the following statements shall, for the purpose of this case only, be considered in evidence in the cause with the same effect as if they had been certified to before an examiner, subject to all legal exceptions thereto:

First. That the plaintiff is a citizen of the United States and State of Massachusetts, and the owner, in his own right, of 146 shares, and, as trustee with others, of 1,316 shares of the capital stock of the Philadelphia, Wilmington and Baltimore Railroad Co.

Second. That the Delaware and Maryland Railroad Company was, at the time of the consolidation, in the bill mentioned, a corporation created by and existing under the provisions of the act of the general assembly of the State of Maryland, entitled "An act to incorporate the Delaware and Maryland Railroad Company," passed at the December session, in the year 1831 of the said general assembly, and the several supplements, and that the said act and supplements are to be considered in evidence.

Third. That the following is a correct copy of the articles of union and consolidation, entered into February 5th, 1838, by and between the Wilmington and Susquehanna Railroad Company, the Baltimore and Port Deposite Railroad Company, and the then Philadelphia, Wilmington and Baltimore Railroad Company.

46 *Articles of union of the Philadelphia, Wilmington and Baltimore, the Wilmington and Susquehanna, and the Baltimore and Port Deposite Railroad companies.*

Articles of union made and concluded this fifth day of February, in the year of our Lord one thousand eight hundred and thirty-eight, between the Wilmington and Susquehanna Railroad Company, the Baltimore and Port Deposite Railroad Company, and the Philadelphia, Wilmington, and Baltimore Railroad Company, by virtue and in pursuance of an act of the general assembly of the State of Delaware, entitled "A further supplement to an act entitled 'An act to incorporate the Wilmington and Susquehanna Railroad Company,'" and an act of the general assembly of Maryland entitled "An act to authorize the union of the Baltimore and Port Deposite Railroad Company, the Wilmington and Susquehanna Railroad Company, and the Philadelphia, Wilmington and Baltimore Railroad Company," and of an act of the general assembly of Pennsylvania, entitled "An act supplementary to the act incorporating the Philadelphia, Wilmington and Baltimore Railroad Company."

First. The said three corporations are hereby united, and from and after the first election of directors hereafter provided for in the third article, shall be merged into one body corporate, under the name and style of "The Philadelphia, Wilmington and Baltimore Railroad Company;" and the stocks of the said three corporations so united shall form

one common stock; and all the estate, real, personal, and mixed, and the rights, privileges, advantages, and immunities belonging to each of the said corporations become and be vested in the said body corporate, and the debts and liabilities of each of the said corporations shall be deemed, and are hereby declared, to be the debts and liabilities of the said body corporate.

47 Second. The stock of the said body corporate is hereby divided into shares of fifty dollars each, of which the present stockholders of the Wilmington and Susquehanna Railroad Company are hereby declared to be entitled in all to sixteen thousand shares; the present stockholders of the Baltimore and Port Deposite Railroad Company, to nineteen thousand shares; the present stockholders of the Philadelphia, Wilmington and Baltimore Railroad Company, to ten thousand shares, including those forfeited heretofore, which are to be held for the use of this corporation; and certificates of stock, as may be regulated by the president and directors of the said body corporate, shall be granted and issued accordingly to each of the said stockholders, so soon as the said stockholders shall have paid up all instalments due upon the shares of stock held by them respectively, and shall have surrendered the certificates previously issued to them as stockholders in the respective companies hereby united; and the capital stock of the said corporation shall consist of such numbers of shares as aforesaid, subject to the rights and privileges of increasing the same from time to time, according to the provisions of the respective charters of the said companies hereby united.

Third. There shall be fifteen directors to manage the affairs and business of the said body corporate; and a meeting of the stockholders of the three corporations hereby united for the election of the first directors shall be held at Wilmington, on Wednesday, the fourteenth day of February instant, of the time and place of which meeting notice shall be given by the present president of the Wilmington and Susquehanna Railroad Company by advertisement in at least three newspapers, at which meeting fifteen directors shall be elected by the said stockholders, voting in person or by proxy, and each share being entitled to one vote; and the directors so elected shall be the officers until the ensuing annual meeting of the stockholders, and until their successors are elected.

Fourth. The stated meeting of the stockholders shall be held in the city of Wilmington on the second Monday of January in each and every year hereafter, at which time and place an annual election of

48 directors shall be made by the stockholders, and fifteen days' notice of the time and place of each stated meeting shall be given by advertisements in at least three newspapers. The election shall be by ballot, and each share of stock shall entitle the holder thereof to one vote, to be given either in person or by proxy, provided it has been held for three calendar months before the time of voting. The directors shall, after the first and each subsequent election, choose by ballot one of their own members to be president of the said body corporate, who shall serve one year, or until the election of a successor. The omission to hold an election for directors at the time prescribed shall in no wise affect the said body corporate, but such election may be had upon due notice from the said president and directors, published as aforesaid, at any time within three months after the time so prescribed as aforesaid. The directors shall hold their offices for one year, and until a new election shall take place; and the powers of the said president and directors shall be the same as are now vested in the president and directors of

the Wilmington and Susquehanna Railroad Company. The president may be removed from his office by a vote of two-thirds of all the directors. The directors may, in each year that they may deem it advisable, elect a vice-president from their own number, who, in the absence of the president, shall have all the powers of the president, and shall be liable to removal in like manner as the president. Five directors shall constitute a quorum for the transaction of business. The directors may, if they shall deem it advisable, appoint an executive committee, consisting of six members, from the States of Pennsylvania, Delaware, and Maryland, for such time and for the performance of such duties as any resolutions of the directors or any by-law may prescribe and assign; and the president or vice-president and any two members of such committee shall constitute a quorum thereof. All officers and agents of the corporation other than directors shall be appointed by the directors, who may prescribe and exact such security as they may deem proper for the performance of their duties.

Fifth. The stated meetings of the board of directors shall be held alternately at Wilmington and Philadelphia, and special meetings
49 may be held either at Wilmington, Philadelphia, or Baltimore. The corporation shall have offices opened at Wilmington, Philadelphia, and Baltimore, at either of which transfers of stock may be made under such regulations as the board of directors may prescribe.

Sixth. All by-laws shall be made, altered, or repealed only by a majority, consisting of not less than two-thirds of all the directors; it being understood that no by-laws shall contravene any of these terms or stipulations; and the existing by-laws of the Wilmington and Susquehanna Railroad Company shall, until altered or repealed as aforesaid, be the by-laws of this corporation, and all rules and regulations necessary for the management and conduct of the business of the company, not provided for in a by-law, may be made by the directors.

In witness whereof the said corporations, parties to this agreement, have caused their respective corporate seals, attested by the signatures of their respective presidents, to be hereunto affixed, the day and year first herein before written.

[L. S.] JAMES PRICE,
President of the Wilmington and Susquehanna R. R. Co.

[L. S.] J. J. COHEN, J'R,
President of the Baltimore & Port Deposite R. R. Co.

[L. S.] MATTHEW NEWKIRK,
President of the Phila., Wil. & Baltimore R. R. Co.

Fourth. That the transportation business over the line of railroad constructed by the three following companies, the Baltimore and Port Deposite Railroad Company, the consolidated Wilmington and Susquehanna Railroad Company, and the original Philadelphia, Wilmington and Baltimore Railroad Company, forming a continuous line from a point at or near the city of Baltimore, in the State of Maryland, to a point at or near the city of Philadelphia, in the State of Pennsylvania, was, prior to the consolidation of the said companies, comparatively
50 small; and that the fact of the line being divided into three parts, each owned by a separate and distinct company, rendered it difficult to manage the said business in a manner satisfactory either to the public or to the stockholders of the said companies.

Fifth. That since the consolidation of the said three companies, the

Philadelphia, Wilmington, and Baltimore Railroad Company, party hereto defendant, has connected that portion of the aforesaid railroad line, which lay to the westward of the Susquehanna River, with that which lay to the eastward by a railroad bridge, constructed at vast expense, across the Susquehanna River, and has thus established, and now, maintains, a continuous railroad route between the cities of Philadelphia and Baltimore; that it has expended immense sums of money in the purchase of land for depot stations and other railroad purposes, in the erection of buildings and other structures thereon, in increasing the capacity of its road by the addition of new main tracks, sidings, turnouts, and other appurtenances, in providing an adequate equipment of rolling-stock and other personal property, and in carrying on efficiently and successfully the business of transporting freight and passengers from one point to another on the said railroad; that the railroad of said company forms part of a great seaboard line of travel and transportation between the northern and southern States of this Union; that its termini are the great and populous cities of Philadelphia and Baltimore; that a vast number of passengers and tons of freight are carried thereon directly through the State of Delaware, and that the capital stock consisted, on the 30th of June, 1869, of 186,088 shares of full-paid stock, of the par value of fifty dollars each.

Sixth. That the president of the Philadelphia, Wilmington and Baltimore Railroad Company, on the second of October, 1869, in response to demands made by the treasurer of the State of Delaware, furnished to him the following statement under protest:

51 OFFICE PHILADELPHIA, WILMINGTON & BALTIMORE R. R. CO.,
"*Philadelphia, October 2d*, 1869.

"To the Treasurer of the State of Delaware.

"SIR: I enclose a statement made on behalf of this company, showing the number of shares of the capital stock of the company, and the appraised value in cash of each share of the same.

"In furnishing this statement, the company is not to be understood as admitting the legality of the tax imposed, or intended to be imposed, on the shares of capital stock, by the fourth section of the act entitled 'An act taxing railroad and canal companies in this State,' which was passed at the last session of the legislature of Delaware.

"These shares belong to the stockholders of the company, and much the larger number are held by persons who are neither citizens nor residents of Delaware, and over whom, or whose property, the legislature of that State has no jurisdiction. The shares which would be taxable under the act in question, greatly exceed in number those held by citizens or residents of Delaware.

"The assumption that the tax is chargeable, not on the property of the stockholder, but on the company, does not render it the less illegal, since the legislation of the State of Delaware, under which the present consolidated Philadelphia, Wilmington and Baltimore Railroad Company was formed, both expressly and by implication, exempted it from taxation of this character.

"For these and other reasons, this company protests against being held liable to the tax, and furnishes the accompanying statement under this protest.

"Very respectfully, your obedient servant,
(Signed) "ISAAC HINCKLEY,
"*President P. W. and B. R. R. Co.*

"THE PHILADELPHIA, WILMINGTON AND BALTO. R. R. CO.,
"TREASURER'S OFFICE,
"*Philadelphia, October 2d*, 1869.

"June 30th, 1869.

"Stock of the Philadelphia, Wilmington, and Baltimore Railroad Company, 186,088 shares, at $50 each, $9,304,400.

(Signed) "A. HORNER, *Treasurer.*

52 "Alfred Horner, treasurer of the Philadelphia, Wilmington and Baltimore Railroad Company, being duly sworn, deposes and says, that the statements of fact above made are true; and the estimate and appraisement of the cash value of each share of stock of the Philadelphia, Wilmington and Baltimore Railroad Company is fifty dollars, to the best of his knowledge, information, and belief.

(Signed) "A. HORNER,
"*Treasurer P., W. and B. R. R. Co.*"

Sworn and subscribed before me this 2d day of October, A. D. 1869.

(Signed) GEO. PATCHELL,
Alderman 7th Ward, Philad'a.

Seventh. That 184,524 shares of the stock of the said company defendant, upon the said 30th of June, 1869, were held by persons who were neither citizens nor residents of Delaware.

Eighth. That the following communication was addressed, by the plaintiff, to the president of the Philadelphia, Wilmington and Baltimore Railroad Company, on October 25th, 1869:

"BOSTON, 39 COURT ST., *October 25th*, 1869.

"DEAR SIR: Will you please inform me whether the Philadelphia, Wilmington and Baltimore Railroad Company intend to protect my interests as a stockholder in the company, by resisting the collection of the tax proposed to be levied thereon by the State of Delaware? As the tax is not a legal one, protection against the levy of it should be provided for.

"Respectfully yours,

(Signed) "W'M MINOT, J'R.

"ISAAC HINCKLEY, Esq.,
"*President P., W. and B. R. R. Co., Philad'a.*"

That the same was submitted to the board of directors of said company, who thereupon passed the following resolution:

"*Resolved*, That, while this board protests against the legality of the said tax, they decline to take the responsibility of interfering to prevent the collection of the same, leaving the stockholders at liberty to assert their rights in such way as they may think proper."

53 Ninth. That, previous to and at the time of the consolidation of the said Baltimore and Port Deposite Railroad Company, the then Philadelphia and Wilmington Railroad Company and the Wilmington and Susquehanna Railroad Company, namely, February 5th, 1838, the capital stock of the said first-named two companies represented real and personal estate of great value locally situated in Maryland and Pennsylvania, respectively, belonging to stockholders not domiciled in Delaware.

Tenth. That the entire length of the railroad of the Philadelphia

Wilmington and Baltimore Railroad Company, including a branch in the State of Maryland, known as the Port Deposite Branch, is 99.74 miles, and 28.09 miles of the said read are in the State of Delaware. That the value of the property of the company locally situated in the State of Delaware, is much less than $\frac{2308}{9974}$ of its entire property; that the bridge across the Susquehanna, in the State of Maryland, represents alone an expenditure exceeding $1,500,000, and that the value of the depot and station grounds in the States of Pennsylvania and Maryland, with the buildings and structures thereon erected, much exceeds $\frac{7666}{9974}$ of the value of the entire depot and station property of the said company.

That the said Philadelphia, Wilmington and Baltimore Company have made large investments in the bonds and stocks of other incorporated companies.

Eleventh. That much the larger portion of the locomotive-engines, passenger-cars, freight-cars, and trucks belonging to the Philadelphia, Wilmington and Baltimore Railroad Company were used during the year 1869 on the aforesaid main line of railroad of the said company, extending from the city of Philadelphia, in the State of Pennsylvania, through the State of Delaware to the city of Baltimore, in the State of Maryland, and for the purpose of transporting persons and property in and by a continuous course of transportation through, from, and into the said State of Delaware; that a number of engines, passenger and freight cars and trucks were used during the said year on the main line from Philadelphia to a point about a mile beyond Wilmington, and thence on the line of railroad known as the peninsular line, extending
54 through Delaware and a part of the eastern shore of Maryland to Crisfield, and the several branches therefrom; and that but very few of either the engines, cars, or trucks of the said company were used exclusively within the State of Delaware during the year 1869.

Twelfth. That any public or private legislative act of Delaware, Maryland, or Pennsylvania, to which any party to this suit may refer on the hearing, shall be considered in evidence.

JAMES E. GOWEN,
J. P. COMEGYS,
GEO. C. GORDON,
Solicitors for Complainants.
T. F. BAYARD,
C. B. LOVE,
ELI SAULSBURY,
Solicitors for Defendants Clarke and Ocheltree.

55 And now, at the June term, 1871, on the twentieth day of June, 1871, the following decree was entered:

Circuit court of the United States for the district of Delaware.

WILLIAM MINOT, JR. PLAINTIFF,
vs.
THE PHILADELPHIA, WILMINGTON AND BALTIMORE Railroad Company et al., defendants. } In equity.

Decree.

This cause came on to be heard at the October term, A. D. 1870, and was argued by counsel on both sides, and thereupon, upon consideration

thereof, it was by the court ordered, adjudged, and decreed as follows: That the defendant, The Philadelphia, Wilmington and Baltimore Railroad Company be enjoined from furnishing to the treasurer of the State of Delaware the statement of the number of locomotives, passenger and freight cars and trucks of the said company, used in the State of Delaware during the year 1869, required by the third section of the act of the general assembly of the State of Delaware, passed April 8th, 1869, entitled "An act taxing railroad and canal companies in this State" and from paying the tax on locomotives, passenger and freight cars, and trucks, attempted to be imposed by the said third section; that
56 the defendant William J. Clarke, treasurer of the State of Delaware, be enjoined from giving notice to any assessor of State taxes of the State of Delaware, of the failure or omission of the said Philadelphia, Wilmington and Baltimore Railroad Company, or its officers to furnish the said statement, and from issuing his warrant, or from proceeding in any way or manner to enforce the collection of the said tax, and that the injunction prayed for be refused, and the bill be dismissed as to all other matters and things therein contained.

And it is further ordered and adjudged, that the costs of the clerk of the court be paid by the several parties to the said bill in equal proportions, and that no costs be taxed for one party as against the other.

By the court:

W. STRONG, *J.*

And, thereupon, on the 11th day of July, 1871, a writ of injunction issued out of said court, pursuant to said decree in the words following, to wit:

Writ of injunction.

UNITED STATES OF AMERICA,
District of Delaware, ss:

57 The President of the United States of America to the Philadelphia, Wilmington and Baltimore Railroad Company, a body corporate of the State of Delaware, by the law of that State, a citizen of the State of Delaware, and William J. Clarke, treasurer of the State of Delaware, and a citizen of the State of Delaware, greeting:

Whereas, William Minot, jr., of Boston, in the State of Massachusetts, has exhibited his bill of complaint before the justices of our circuit court of the United States for the district of Delaware, begun and holden at Wilmington, in said district, on the twenty-first day of June, A. D. 1870, against you the said The Philadelphia, Wilmington and Baltimore Railroad Company, and you the said William J. Clarke, treasurer of the State of Delaware, praying to be relieved touching the matters and things therein complained of; and whereas by a decree of said court, made on the twentieth day of June, A. D. 1871, it was, by the court, ordered, adjudged, and decreed that the defendant, The Philadelphia, Wilmington and Baltimore Railroad Company, be enjoined from furnishing to the treasurer of the State of Delaware the statement of the number of locomotives, passenger and freight cars, and trucks of the said company, used in the State of Delaware during the year 1869, required by the third section of the act of the general assembly
58 of the State of Delaware, passed April 8th, 1869, entitled "An act taxing railroad and canal companies in this State," and from paying the tax on locomotives, passenger and freight cars, and trucks,

attempted to be imposed by the said section; and that the defendant William J. Clarke, treasurer of the State of Delaware, be enjoined from giving notice to any assessor of State taxes of the State of Delaware of the failure or omission of the said Philadelphia, Wilmington and Baltimore Railroad Company, or its officers, to furnish the said statement, and from issuing his warrant, or from proceeding in any way or manner to enforce the collection of the said tax.

We, therefore, in consideration thereof, strictly enjoin and command you, and each of you, your officers, agents, or employees, and attorneys, that from and immediately after the receipt and notice of this our writ, by you or any of you, that you, the said defendant, The Philadelphia, Wilmington and Baltimore Railroad Company, shall not furnish to the treasurer of the State of Delaware the statement of the number of locomotives, passenger and freight cars, and trucks of the said company, used in the State of Delaware during the year 1869, required by the third section
of the act of the general assembly of the State of Delaware,
59 passed April 8, 1869, entitled "An act taxing railroad and canal companies in this State," and that you shall not pay the tax on locomotives, passenger and freight-cars, and trucks, attempted to be imposed by the said third section.

And that you, the said defendant William J. Clarke, treasurer of the State of Delaware, shall not give notice to any assessor of State taxes of the State of Delaware of the failure or omission of the said Philadelphia, Wilmington and Baltimore Railroad Company, or its officers, to furnish the said statement, and that you shall not issue your warrant, or proceed in any way or manner to enforce the collection of the said tax.

Whereof you are not to fail on pain of one thousand dollars, to be levied on your and each of your goods, chattels, lands, and tenements to our use.

Witness the Honorable Salmon P. Chase, at Wilmington, in the district of Delaware, this twenty-seventh day of June, A. D. 1871.

[SEAL C. C. U. S., DIST. DEL.] CHA'S G. RUMFORD, *Clk.*

Marshal's return.

Served on the within-named defendants. So answers—

JOHN M. DUNN,
U. S. Marshal, Dist. of Del.

60 And now, to wit, this twentieth day of June, A. D. 1871, the complainant prays an appeal in the words following, to wit:

Circuit court of the United States for the district of Delaware.

MINOT
vs.
THE PHILADELPHIA, WILMINGTON AND BALTIMORE Railroad Company et al. } In equity.

To the honorable the judges of the said circuit court:

The petition of William Minot, jr., plaintiff as above, respectively represents—

That the matter in dispute in the above cause exceeds the sum of two thousand dollars; that he desires to appeal from the final decree

rendered in the said cause to the Supreme Court of the United States; and that he prays that the said appeal may be allowed.

W. MINOT, JR.

Upon which said petition is the following endorsement, to wit:

Appeal allowed.

W. STRONG,
Associate Justice Supreme Court United States.

61 And now, to wit, this 22nd day of July, 1871, came the complainant, and filed his bond with Isaac Hinckley and Samuel M. Felton as sureties in the penalty of two thousand dollars, conditioned to prosecute his appeal to effect, and answer all costs if he shall fail to make good his plea, which bond is as follows:

Circuit court of the United States for the district of Delaware.

Bond for costs on appeal.

WILLIAM MINOT, JR.,
vs.
THE PHILADELPHIA, WILMINGTON AND BALTIMORE Railroad Company, William J. Clarke, and M. B. Ocheltree. } In equity.

Know all men by these presents that we, William Minot, jr., of the city of Boston, in the State of Massachusetts, and Isaac Hinckley, of the city of Wilmington, Delaware, and Samuel M. Felton, of the city of Philadelphia, and State of Pennsylvania, are held and firmly bound unto the Philadelphia, Wilmington, and Baltimore Railroad Company, William J. Clarke, and M. B. Ocheltree, defendants above named, in the sum of two thousand dollars, to be paid to the said obligees, their successors, executors, or administrators; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and
62 severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated this twenty-second day of July, anno Domini eighteen hundred and seventy-one.

Whereas the above-named William Minot, jr., hath appealed to the Supreme Court of the United States from the final decree rendered in the above suit by the circuit court of the United States for the district of Delaware: Now, therefore, the condition of this obligation is such, that if the said William Minot, jr., shall prosecute his appeal with effect, and pay all damages and costs if he fail to make his appeal good, then this obligation shall be void; but otherwise shall remain in full force and virtue.

W. MINOT, JR. [SEAL.]
ISAAC HINCKLEY. [SEAL.]
S. M. FELTON. [SEAL.]

Sealed and delivered in the presence of—
CHA'S J. HOYDEN, by William Minot, jr.; and in the presence of us, by witnesses to signatures of S. M. Felton & Isaac Hinckley.
GEO. KUGLER.

Approval.

Approved.

W. STRONG, *J.*

63

64 *Citation.*

WILLIAM MINOT, JR.,
vs.
THE PHILADELPHIA, WILMINGTON AND BALTIMORE Railroad Company, William J. Clark, and M. B. Ocheltree.

In the circuit court of the United States for the district of Delaware.
In equity.

To the Philadelphia, Wilmington and Baltimore Railroad Company, William J. Clark, and M. B. Ocheltree, defendant's above-named.

You are hereby cited and admonished to be and appear at a
65 Supreme Court of the United States, to be holden at Washington, on the first Monday of December, 1871, pursuant to an appeal taken by William Minot, jr., plaintiff as above, from the final decree rendered by the circuit court in the above case, to show cause, if any, why the said decree should not be corrected, and why speedy justice should not be decreed to the parties in that behalf.

Witness the Honorable William Strong, one of the justices of the Supreme Court of the United States, and of the said circuit court, this 22nd day of July, anno Domini one thousand eight hundred and seventy-one.

WILLIAM STRONG,
Asso. Jus. Sup. C. U. S.

Service accepted for the P. W. & B. R. R. Company by—
ISAAC HINCKLEY,
Prest. P. W. & B. R. R. Co.

Service accepted.

W. J. CLARKE.
M. B. OCHELTREE.

Citation to complainant, on appeal of defendants to the Supreme Court of the United States.

WILLIAM MINOT, JR.,
vs.
THE PHILADELPHIA, WILMINGTON AND BALTIMORE Railroad Company, William J. Clarke, and M. B. Ocheltree.

66 In the circuit court of the United States for the district of Delaware. In equity.

To WILLIAM MINOT, jr.:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December, 1871, pursuant to an appeal taken by the above defendants from the final decree rendered by the circuit court in the above case, to show cause, if any, why the said decree should not be corrected, and why speedy justice should not be decreed to the parties in that behalf.

Witness the Honorable William Strong, one of the justices of the Supreme Court of the United States, and of the said circuit court, this 22d day of July, A. D. one thousand eight hundred and seventy-one.

W. STRONG, *J.*

Service accepted.

ISAAC HINCKLEY,
Pres't P. W. & B. R. R. Co.

SEPT. 18TH, 1871.

I acknowledge due service of the within citation.

W'M MINOT, JR.

OCT. 13, 1871.

67 In testimony that the foregoing is truly taken from the record of proceedings of the circuit court of the United States of America for the district of Delaware, in the case of William Minot, jr., vs. The Philadelphia, Wilmington and Baltimore Railroad Company, William J. Clarke, & M. B. Ocheltree, in equity, I have hereunto subscribed my name and affixed the seal of the said circuit court this 30th day of October, anno Domini 1871.

[SEAL.]

CHA'S G. RUMFORD,
Clerk of said Circuit Court.

68 And now, to wit, this twentieth day of June, A. D. 1871, the defendants William J. Clark and Maxwell B. Ochiltree, pray an appeal in the words following, to wit:

Circuit court of the United States for the district of Delaware.

MINOT
vs.
THE PHILAD', WILMINGTON & BALTIMORE R. R. Co., a body corporate of the State of Delaware, and William J. Clark, & M. B. Ochiltree, citizens of the State of Delaware. } In equity.

To the honorable the judges of the circuit court aforesaid:

The petition of William J. Clarke and Maxwell B. Ochiltree, defendants above-named, respectfully represents:

That the matter in dispute in the above cause exceeds the sum
69 of two thousand dollars, and they desire to appeal from the final decree rendered in the said cause to the Supreme Court of the United States, and they pray the said appeal may be granted.

W. J. CLARKE.
M. B. OCHILTREE.

Appeal allowed.

W. STRONG, *J.*

Filed 2d May, 1872. Sup. C t U. S.

(Indorsement on cover:) No. 493. William Minot, jr., appellant, vs. The Philadelphia, Wilmington & Baltimore Railroad Company, W. J. Clarke & M. B. Ocheltree. Filed 7th December, 1871. And No. 649, W. J. Clarke & M. B. Ocheltree, appellants, vs. William Minot, jr. Filed 2d May, 1872. Delaware C. C. U. S.

SUPREME COURT OF THE UNITED STATES.

Nos. 248 and 381.

DECEMBER TERM, 1872.

WILLIAM MINOT, J'R,
vs.
THE PHILADELPHIA, WILMINGTON, & BALT. R. R. Co., & al., } No. 248.

AND

W. J. CLARKE & M. B. OCHELTREE
vs.
WILLIAM MINOT, J'R. } No. 381. Cross appeal.

And now, February 7th, 1873, counsel for all parties in interest having agreed that the record shall be considered as having been amended in the court below by the entry of the appearance of George H. Bates, for the Phil'a, Wilmington, and Baltimore Railroad Company, and by the entry of an order that the bill be taken pro confesso as against the said railroad company, it is, on motion of J. E. Gowen for William Minot, ordered that the record shall be considered as so amended.

Filed 7th February, 1873.

On motion of Mr. J. E. Gowen, in behalf of the respective counsel in these cases, it is now here ordered by the court that the record be amended by the entry of the appearance of George R. Bates, as solicitor for the Philadelphia, Wilmington, and Baltimore Railroad Company, one of the defendants in the court below, and by the entry of an order that the bill be taken pro confesso as against the said Philadelphia, Wilmington, and Baltimore Railroad Company, defendant in the bill. The amendment to be made as if made in the court below, per stipulation filed.

O

Supreme Court of the United States.

WILLIAM MINOT, Jr.

vs.

The Philadelphia, Wilmington and Baltimore Railroad Company, W. J. Clark, and M. B. Ocheltree.

Appeals of WILLIAM MINOT, Jr. and of WILLIAM J. CLARK and M. B. OCHELTREE, from the decree of the Circuit Court of the United States for the District of Delaware.

PAPER BOOK OF WILLIAM MINOT, Jr.

ALLEN, LANE & SCOTT, PRS., PHILA.

In the Supreme Court of the United States.

APPEALS OF WILLIAM MINOT, JR. AND OF W. J. CLARKE AND M. B. OCHELTREE FROM THE FINAL DECREE IN EQUITY OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF DELAWARE, IN THE SUIT OF WILLIAM MINOT, JR., A CITIZEN OF THE STATE OF MASSACHUSETTS, *VS.* THE PHILADELPHIA, WILMINGTON AND BALTIMORE RAILROAD COMPANY, A BODY CORPORATE OF THE STATE OF DELAWARE, AND WILLIAM J. CLARKE AND M. B. OCHELTREE, CITIZENS OF THE STATE OF DELAWARE.

The first appeal (that of William Minot, Jr.) is docketed by the style of William Minot, Jr., appellant, *vs.* the Philadelphia, Wilmington and Baltimore Railroad Company, William J. Clarke and M. B. Ocheltree; and the second appeal (that of W. J. Clarke and M. B. Ocheltree) is docketed by the style of W. J. Clarke and M. B. Ocheltree *vs.* William Minot, Jr.

ABSTRACT OF THE CASE.

The complainant, the holder of certain shares of the capital stock of the Philadelphia, Wilmington and Baltimore Railroad Company, filed a bill in the court below to enjoin that company from paying, and the treasurer and collector of the State of Delaware from collecting, certain taxes imposed by a statute of the State of Delaware, upon the ground that the statute, so far as it imposed the taxes in controversy, was in conflict with the Constitution of the United States.

The citizenship of the parties was such as to bring the case

within the jurisdiction of the Circuit Court, since the complainant was a citizen of the State of Massachusetts, and the defendants, the Philadelphia, Wilmington and Baltimore Railroad Company, William J. Clarke, treasurer of the State of Delaware, and M. B. Ocheltree, collector of State taxes for the State of Delaware, were citizens of the State of Delaware.

The taxes in controversy were imposed by the following sections of an act of the General Assembly of the State of Delaware, entitled "An act taxing railroad and canal companies in this State," passed April 8th, 1869:—

"SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met*, That all railroad and canal companies incorporated under the laws of this State, and doing business within the State, or which may hereafter be incorporated in this State, shall, on the first day of January next, after the passage of this act, and on the first day of January in each and every year thereafter, in addition to the taxes now imposed upon such companies by the laws of this State, pay to the State Treasurer, for the use of the State, a tax of three per centum upon the net earnings or income received by said railroad or canal company from all sources during the preceding year: *Provided*, That where the line of railroad or canal belonging to any company liable to the said tax lies partly in this State and partly in an adjoining State or States, the part or share of such net earnings or income of such company only shall be subject to the said tax as will be in that proportion to the whole net earnings or income of such company which the length of said road or canal within the limits of the State bears to the whole length of such road or canal.

"SEC. 3. That in addition to the tax upon net earnings or income provided for in the first section of this act, every railroad company incorporated by this State, and doing business in this State, shall pay to the State Treasurer, for the use of the State, on the first day of January next, or within thirty days thereafter, and on the first day of January in each and every year thereafter, or within thirty days from such times, a tax of one hundred dollars for the use in this State of each locomotive belonging in

whole or part to such company, and at any time during the preceding year used by said company within this State, and twenty-five dollars for the use in this State of each passenger car belonging in whole or part to such company, and at any time during the preceding year used by said company within this State, and ten dollars for the use in this State of each freight car of every description, and each truck belonging to such company, and at any time during the preceding year used by said company within this State.

"SEC. 4. That every railway company and every canal company incorporated by or under any law of this State, and doing business within this State, shall, in addition to other taxes imposed by law on the first day of July next, after the passage of this act, and on the first day of July in each and every year thereafter, or within thirty days from such times, pay unto the State Treasurer, for the use of the State, a tax of one-fourth of one per centum upon the actual cash value of every share of the capital stock of such company." * * * * *"Provided,* That where the line of railroad or canal belonging to any company liable to said tax lies partly in this State and partly in an adjoining State or States, such company shall only be required to pay the tax aforesaid on such number of the shares of its capital stock as will be in that proportion to the whole number of shares of such capital stock which the length of said railroad or canal within the limits of this State bears to the whole length of such railroad or canal."

The collection of these taxes was provided for by requiring the president or treasurer of the company to furnish the State Treasurer with statements "showing the net earnings or income of such company from all sources during the preceding year," "the number of locomotives, passenger cars, freight cars of every description and trucks belonging to such company and used or employed at any time during the preceding year within the State, and the number of shares of the capital stock of such company, with an estimate and appraisement of the actual cash value of each share of such capital stock," and to pay the taxes chargeable upon the several items included in these statements.

If the statement of net earnings was not furnished, the State Treasurer was required to make an estimate of the amount of net earnings. If the statement of the number of locomotives, &c., or that in regard to the number and value of shares of capital stock was not furnished, the law provided for notice from the State Treasurer to an assessor of State taxes, an assessment by the latter and a return of the assessment to the State Treasurer. If any tax was not paid, the State Treasurer was to issue a warrant to a collector of State taxes, requiring him to collect the tax and a penalty of ten per cent.; and this warrant could be enforced by a sale of the property of the company in default.

The tax imposed "on the actual cash value of every share of capital stock" became due for the first time within thirty days from the 1st of July, 1869; and within that period the statement from which the tax was to be ascertained was to be furnished. On the second day of October, 1869, the president of the Philadelphia, Wilmington and Baltimore Railroad Company, in compliance with a demand of the State Treasurer, sent to that officer a statement that the capital stock of the company consisted of one hundred and eighty-six thousand and eighty-eight (186,088) shares of the value of fifty dollars each, making an aggregate value of nine millions three hundred and four thousand four hundred dollars ($9,304,400). This statement was accompanied by a protest against the legality of the tax, in which protest it was alleged that the shares belonged to the stockholders of the company; that much the larger number of them were held by persons who were neither citizens nor residents of Delaware, and over whom or whose property that State had no jurisdiction; that the shares which would be taxable under the act in question greatly exceeded in number those held by citizens or residents of Delaware; and that the assumption that the tax was chargeable, not on the property of the stockholders, but on the company, did not render it less illegal, since the Legislature of the State of Delaware, under which the present consolidated Philadelphia, Wilmington and Baltimore Railroad Company was formed, expressly as well as by implication exempted it from taxation of that character.

Some time afterward the complainant, having reason to believe

that the company would pay the tax, wrote to the president, inquiring whether they intended to protect his interests by resisting the collection of the tax proposed to be levied thereon by the State of Delaware, and suggesting that, as the tax was not "a legal one, protection against the levy of it should be provided for."

This communication was laid before the board of directors; but they passed a resolution declining to take the responsibility of interfering to prevent the collection of the tax, and leaving the stockholders to assert their rights in such way as they might think proper.

The present proceeding was instituted soon afterwards, by the complainant filing a bill in equity, on behalf of himself and all other stockholders of the company who might become parties thereto, to have the taxes on capital stock, net earnings and the use of rolling stock declared unconstitutional and the payment or collection of the same enjoined.

To enable the court to understand the grounds upon which the validity of these taxes is questioned, it will be necessary to present a summary of some of the legislation of the States of Delaware, Maryland and Pennsylvania relating to the present Philadelphia, Wilmington and Baltimore Railroad Company.

This company was formed in the year 1838, by the consolidation of the Wilmington and Susquehanna Railroad Company of Delaware and Maryland, the Baltimore and Port Deposit Railroad Company of Maryland, and the original Philadelphia, Wilmington and Baltimore Railroad Company of Pennsylvania,—the Wilmington and Susquehanna Railroad Company being at the time a company which had been formed in the year 1836 by the consolidation of the Wilmington and Susquehanna Railroad Company of the State of Delaware, and the Delaware and Maryland Railroad Company of the State of Maryland.

The original Wilmington and Susquehanna Railroad Company of Delaware was created under the provisions of an act of the General Assembly of the State of Delaware, enacted on the eighteenth day of January, 1832, entitled "An act to incorporate the Wilmington and Susquehanna Railroad Company," and of a supplement thereto, enacted on the 26th of January, 1835; and

was empowered to construct and maintain a railroad, extending from a point on the boundary line of the States of Pennsylvania and Delaware, "towards the Susquehanna in the direction of Baltimore." By a further supplement to the original act of incorporation, passed July 24th, 1835, and by an act of the General Assembly of the State of Maryland, entitled "A further supplement to the act entitled 'An act to incorporate the Delaware and Maryland Railroad Company,' passed at the December session, 1835, the Wilmington and Susquehanna Railroad Company of Delaware was united with the Delaware and Maryland Railroad Company of Maryland, the capital stock of the two companies were consolidated, and the two companies became one corporation, by the style of 'the Wilmington and Susquehanna Railroad Company.'"

The statute of Delaware which authorized this consolidation provided that the holders of the stocks of the two companies should, when consolidated, *hold, possess and enjoy all the property, rights and privileges,* and exercise all the power granted to and "*vested in the said railroad companies, or either of them, by this or any other law or laws of this State or of the State of Maryland;*" and the statute of Maryland which also authorized the consolidation recited, ratified and adopted the section of the statute of Delaware from which the above extract is taken, and conferred the rights, authorities, privileges and powers referred to in the said section upon the proposed consolidated Wilmington and Susquehanna Railroad Company.

The Delaware and Maryland Railroad Company, previous to its consolidation with the Wilmington and Susquehanna Railroad Company, was a corporation of the State of Maryland, created by an act of the General Assembly of that State, entitled "An act to incorporate the Delaware and Maryland Railroad Company," passed at the December session of 1831; and, under the provisions of that act and the several supplements thereto, was authorized to construct and maintain a railroad from a point on the Maryland line to Port Deposit or any other point on the Susquehanna river; and by the nineteenth section of the same act it was provided "that the *shares of the capital stock of said*

company shall be deemed and considered personal estate, and shall be exempt from the imposition of any tax or burthen by the State's assenting to this law, except upon that portion of the permanent and fixed works of said company which may be within the State of Maryland."

The authorized capital stock of the *original* Wilmington and Susquehanna Railroad Company of Delaware consisted of eight thousand shares, of the par value of fifty dollars per share; and the Delaware statute of July 24th, 1835, which authorized the consolidation of this company and the Delaware and Maryland Railroad Company into "The Wilmington and Susquehanna Railroad Company," expressly provided that "*The Wilmington and Susquehanna Railroad Company shall pay annually into the treasury of the State a tax of one-quarter of one per cent. on the capital stock thereof of four thousand dollars,* (meaning, no doubt, four hundred thousand dollars,) *the said tax to be paid semi-annually, on the first day of January and the first day of July in each and every year hereafter, and the first payment of five hundred dollars to be made on the first day of January next,*" and at the same time repealed the section (23d) in the act of 1832 by which the original Wilmington and Susquehanna Railroad Company had been required to pay a tax of eight per centum on all dividends exceeding six per centum of the capital stock actually paid in. There was no other stipulation or condition in reference to the liability of the consolidated company to taxation, either upon its capital stock or otherwise, by the State of Delaware.

It may be convenient at this point to call the attention of the court to the position taken in the plaintiff's bill, that the acceptance of the provisions of the Delaware and Maryland acts by the stockholders of the two companies which were consolidated into the Wilmington and Susquehanna Railroad Company, and the formation of the latter company, created a contract between that company and the State of Delaware which, by necessary implication, precluded the State from taxing the capital stock of the company, except to the extent of a tax of one-quarter of one per cent. on a capital of four hundred thousand dollars ($400,000), as provided in the fourth section of the Delaware act; and which,

also, in express terms, secured (except as aforesaid) to the company exemption from taxation of its shares of capital stock, as being one of the "privileges" conferred upon one of its constituent companies, the Delaware and Maryland company, by its Maryland charter, and secured and ratified to the consolidated company the first section of the Delaware act of July 24th, 1835.

By articles of union and consolidation entered into the 5th of February, 1838, the consolidation of the then Wilmington and Susquehanna Railroad Company, the Baltimore and Port Deposit Railroad Company and the then Philadelphia, Wilmington and Baltimore Railroad Company, a corporation of the State of Pennsylvania, into one corporation, styled the "Philadelphia, Wilmington and Baltimore Railroad Company," was effected. The stock of three constituent companies was merged into one common stock, of which sixteen thousand shares, of the par value of fifty dollars per share, were awarded to the stockholders of the Wilmington and Susquehanna Railroad Company; sixteen thousand shares, of the same par value, to the stockholders of the Baltimore and Port Deposit Railroad Company; and ten thousand shares, of the same par value, to the stockholders of the original Philadelphia, Wilmington and Baltimore Railroad Company.

The Baltimore and Port Deposit Railroad Company was a Maryland corporation, created by an act of the December session, 1831, of the General Assembly of that State, and authorized to construct and maintain a railroad from the city of Baltimore to Port Deposit on the Susquehanna river. The original Philadelphia, Wilmington and Baltimore Railroad Company was a Pennsylvania corporation, originally incorporated as the "Philadelphia and Delaware County Railroad Company," by an act approved April 2d, 1831. Its name was afterwards changed to that of "The Philadelphia, Wilmington and Baltimore Railroad Company," and the object of its incorporation was the construction and maintenance of a railroad from the city of Philadelphia to the boundary line of the State of Delaware.

The consolidation of the three companies into the present Philadelphia, Wilmington and Baltimore Railroad Company was

effected under and in pursuance of the following acts of the Legislatures of Delaware, Maryland and Pennsylvania, viz.:—

1. An act of the General Assembly of Delaware, passed February 4th, 1833, entitled, "A supplement to the act entitled 'An act to incorporate the Wilmington and Susquehanna Railroad Company,' by which the original Wilmington and Susquehanna Railroad Company of Delaware, (to all of whose 'property, rights and privileges' and 'powers,' the consolidated Wilmington and Susquehanna Railroad Company of Delaware and Maryland succeeded, as already shown,) was 'authorized and empowered to form a union with such companies as are or may be incorporated in the States of Pennsylvania and Maryland, respectively, for the purpose of constructing railroads in the said States to unite with the railroad contemplated by the act to which this is a supplement, so that the capital stock of the said companies resspectively shall constitute a common stock, and the respective companies shall constitute one company and be entitled to all the rights, privileges and immunities which each and all of them possess, have and enjoy under and by virtue of their respective charters.'"

2. An act of the General Assembly of Maryland, passed January 20th, 1838, entitled "An act to authorize the union of the Baltimore and Port Deposit Railroad Company, the Wilmington and Susquehanna Railroad Company and the Philadelphia, Wilmington and Baltimore Railroad Company," by which the three companies were authorized to form a union with each other, "so that the said three corporations shall be merged in and constitute one body corporate, under the name of the Philadelphia, Wilmington and Baltimore Railroad Company, upon such terms and conditions and under such regulations as may be specified in the agreement of union; and that said body corporate so formed shall be entitled within this State to all the powers and privileges and advantages now belonging to the two first above-named corporations."

3. An act of the General Assembly of Pennsylvania, approved December 19th, 1837, entitled "An act supplementary to the act incorporating the Philadelphia, Wilmington and Baltimore Rail-

also, in express terms, secured (except as aforesaid) to the company exemption from taxation of its shares of capital stock, as being one of the "privileges" conferred upon one of its constituent companies, the Delaware and Maryland company, by its Maryland charter, and secured and ratified to the consolidated company the first section of the Delaware act of July 24th, 1835.

By articles of union and consolidation entered into the 5th of February, 1838, the consolidation of the then Wilmington and Susquehanna Railroad Company, the Baltimore and Port Deposit Railroad Company and the then Philadelphia, Wilmington and Baltimore Railroad Company, a corporation of the State of Pennsylvania, into one corporation, styled the "Philadelphia, Wilmington and Baltimore Railroad Company," was effected. The stock of three constituent companies was merged into one common stock, of which sixteen thousand shares, of the par value of fifty dollars per share, were awarded to the stockholders of the Wilmington and Susquehanna Railroad Company; sixteen thousand shares, of the same par value, to the stockholders of the Baltimore and Port Deposit Railroad Company; and ten thousand shares, of the same par value, to the stockholders of the original Philadelphia, Wilmington and Baltimore Railroad Company.

The Baltimore and Port Deposit Railroad Company was a Maryland corporation, created by an act of the December session, 1831, of the General Assembly of that State, and authorized to construct and maintain a railroad from the city of Baltimore to Port Deposit on the Susquehanna river. The original Philadelphia, Wilmington and Baltimore Railroad Company was a Pennsylvania corporation, originally incorporated as the "Philadelphia and Delaware County Railroad Company," by an act approved April 2d, 1831. Its name was afterwards changed to that of "The Philadelphia, Wilmington and Baltimore Railroad Company," and the object of its incorporation was the construction and maintenance of a railroad from the city of Philadelphia to the boundary line of the State of Delaware.

The consolidation of the three companies into the present Philadelphia, Wilmington and Baltimore Railroad Company was

effected under and in pursuance of the following acts of the Legislatures of Delaware, Maryland and Pennsylvania, viz.:—

1. An act of the General Assembly of Delaware, passed February 4th, 1833, entitled, "A supplement to the act entitled 'An act to incorporate the Wilmington and Susquehanna Railroad Company,' by which the original Wilmington and Susquehanna Railroad Company of Delaware, (to all of whose 'property, rights and privileges' and 'powers,' the consolidated Wilmington and Susquehanna Railroad Company of Delaware and Maryland succeeded, as already shown,) was 'authorized and empowered to form a union with such companies as are or may be incorporated in the States of Pennsylvania and Maryland, respectively, for the purpose of constructing railroads in the said States to unite with the railroad contemplated by the act to which this is a supplement, so that the capital stock of the said companies resspectively shall constitute a common stock, and the respective companies shall constitute one company and be entitled to all the rights, privileges and immunities which each and all of them possess, have and enjoy under and by virtue of their respective charters.'"

2. An act of the General Assembly of Maryland, passed January 20th, 1838, entitled "An act to authorize the union of the Baltimore and Port Deposit Railroad Company, the Wilmington and Susquehanna Railroad Company and the Philadelphia, Wilmington and Baltimore Railroad Company," by which the three companies were authorized to form a union with each other, "so that the said three corporations shall be merged in and constitute one body corporate, under the name of the Philadelphia, Wilmington and Baltimore Railroad Company, upon such terms and conditions and under such regulations as may be specified in the agreement of union; and that said body corporate so formed shall be entitled within this State to all the powers and privileges and advantages now belonging to the two first above-named corporations."

3. An act of the General Assembly of Pennsylvania, approved December 19th, 1837, entitled "An act supplementary to the act incorporating the Philadelphia, Wilmington and Baltimore Rail-

road Company," by which it was made lawful for that company to form a union with the Wilmington and Susquehanna Railroad Company and the Baltimore and Port Deposit Railroad Company, so the stock of the said three companies may constitute a common stock" and the stockholders of the three companies "become one body corporate and politic, under the name and style of the Philadelphia, Wilmington and Baltimore Railroad Company, with all the rights and privileges incident to a corporation, and with all the rights, powers and privileges which, by virtue of any law of this Commonwealth, is vested in the Philadelphia, Wilmington and Baltimore Railroad Company."

Previous to the consolidation, the three companies had constructed and were operating their respective railroads, which, together, formed a connected line of railroad from Philadelphia to Baltimore, via Wilmington, excepting the interval between the eastern terminus of the Baltimore and Port Deposit Railroad, on the western bank of the Susquehanna, and the western terminus of the Wilmington and Susquehanna Railroad, on the eastern bank of the same river, which interval was supplied by a ferry; but the line was inferior in structure and equipment to that since maintained by the consolidated company, and its business was comparatively small.

Since the consolidation, the Philadelphia, Wilmington and Baltimore Railroad Company has built a bridge across the Susquehanna, in the State of Maryland, at a vast expense, and has thus established and now maintains a continuous railroad route between Philadelphia and Baltimore, and has expended immense sums in laying an additional main track, sidings, turnouts, &c., in building depots, stations, &c., and in furnishing an adequate equipment of rolling-stock. Their railroad forms part of the great seaboard line between the Northern and Southern States, by which an immense number of passengers and of tons of freight are annually transported through the State of Delaware. The capital stock of the company when the bill was filed was represented by one hundred and eighty-six thousand and eighty-eight fully paid shares of the par value of fifty dollars each, (of which 184,524 shares were held by persons who were neither

citizens nor residents of Delaware,) although when the consolidation took place the capital stock consisted of but forty-five thousand shares.

The capital stock of the Maryland and Pennsylvania companies, previous to and at the time of the consolidation of these companies with the Delaware company, represented real and personal estate of great value (locally situated in these States) belonging to stockholders not domiciled in Delaware.

The entire length of the railroad of the consolidated Philadelphia, Wilmington and Baltimore Railroad Company, including a branch in the State of Maryland, known as the Port Deposit Branch, is $97\frac{74}{100}$ miles, of which $23\frac{8}{10}$ miles are in the State of Delaware; but the value of the property of the company locally situated in the State of Delaware is much less than $\frac{2308}{9974}$ of its entire property,—the bridge across the Susquehanna, in the State of Maryland, representing alone an expenditure exceeding $1,500,000, and the value of the depot and station grounds, in the States of Pennsylvania and Maryland, with the buildings and structures thereon, much exceeding $\frac{7666}{9974}$ of the value of the entire depot and station property of the company.

97.74

The company has made large investments in the bonds and stock of other incorporated companies.

Much the larger number of its locomotive engines, passenger cars, freight cars and trucks were used, during the year 1869, on its main line of railroad, extending from Philadelphia through the State of Delaware to Baltimore, in Maryland, for the purpose of transporting persons and property in and by a continuous course of transportation through, from and into the State of Delaware. A number of engines, passenger and freight cars and trucks were used during the said year on the main line from Philadelphia to a point about a mile beyond Wilmington, and thence on the line of railroad known as the Peninsular line, extending through Delaware and a part of the eastern shore of Maryland to Crisfield, and the several branches therefrom; and but very few engines, cars or trucks of the said company were used exclusively within the State of Delaware during the year 1869.

The case was heard on the bill, the answer of Messrs. Clark and Ocheltree, and certain statements of fact agreed to be considered in evidence in the cause, with the same effect as if they had been certified to before an examiner, subject to all legal exceptions thereto.

As against the railroad company, which filed no answer, the bill was taken as confessed; and the accidental omission of the entry of an order to that effect was afterwards remedied by an agreement of counsel for all parties that the record in this court should be considered as having been amended in the court below by the entry of such an order.

The decree of the court below enjoined the railroad company from furnishing the statement of the number of locomotives, passenger and freight cars and trucks used in the State of Delaware during the year 1869, as required by the act of April 8th, 1869, and from paying the tax on locomotives, passenger and freight cars and trucks attempted to be imposed by the said act; enjoined the defendants, Clark and Ocheltree, from enforcing the collection of the said tax; dismissed the bill as to all other matters and things therein contained, and ordered that the costs of the clerk of the court should be paid by the several parties to the bill, in equal proportions, and that no costs should be taxed by one party as against the other.

By this decree the tax on the use of rolling-stock was declared invalid, and the taxes on capital stock and net earnings were sustained. The case is now before the court on appeals from the decree, taken by the complainant and by Messrs. Clark and Ocheltree.

ABSTRACT OF THE PLEADINGS.

The above *abstract of the case* presents, as briefly as possible, all the facts upon which the legal questions at issue were founded, and care has been taken not to state anything as a fact which is not admitted by the answer, or by the agreed "statement of facts" which supplied the place of an examiner's report. The

controversy between the parties is purely one of law, and the issues raised by the pleadings may be stated as follows:—

1. Whether the tax upon shares of the capital stock of the Philadelphia, Wilmington and Baltimore Railroad Company, imposed by the act of April 8th, 1869, was not a violation of the contract between the State of Delaware and the company contained in the charter of the company.

2. Whether the said tax was not an unconstitutional usurpation by the State of Delaware of the right to tax property beyond its jurisdiction.

3. Whether the said tax was not a violation of the clause of the Constitution of the United States which confers upon Congress the power "to regulate commerce with foreign nations and among the several States."

4. Whether the said tax was not an unlawful interference with the constitutional right of transit for persons and property from one State into or through another.

5. Whether the tax upon the net earnings of the company, imposed by the same act, is not a violation of the contract between the State of Delaware and the company contained in the charter of the company.

6. Whether the said tax upon net earnings is not an unconstitutional usurpation by the State of Delaware of the right to tax property beyond its jurisdiction.

7. Whether the said tax was not a violation of the clause of the Constitution of the United States which confers upon Congress the power "to regulate commerce with foreign nations and among the several States."

8. Whether the said tax was not an unlawful interference with the constitutional right of transit for persons and property from one State into or through another.

9. Whether the tax of one hundred dollars for the use in this State (Delaware) of each locomotive belonging in whole or part to such company, and at any time during the preceding year used by said company within this State, and twenty-five dollars for the use in this State of each passenger car belonging in whole or part to such company, and at any time during the preceding year used by said company within this State (Delaware), and ten dollars for the use in this State of each freight car of every description and each truck belonging to such company, and at any time during the preceding year used by said company within this State, imposed by said act, is not a violation of the clause of the Constitution of the United States which confers upon Congress the power "to regulate commerce with foreign nations and among the several States."

10. Whether the said last-mentioned tax is not an unlawful interference with the constitutional right of transit for persons and property from one State into or through another.

11. Whether the said last-mentioned tax is not a violation of the contract between the State of Delaware and the company contained in the charter of the company.

STATEMENT OF THE ERRORS RELIED UPON ON THE APPEAL ENTITLED WILLIAM MINOT, JR., APPELLANT, *VS.* THE PHILADELPHIA, WILMINGTON AND BALTIMORE RAILROAD COMPANY, WILLIAM J. CLARKE AND M. B. OCHELTREE.

1. The court below erred in dismissing the plaintiff's bill, so far as the same prayed an injunction against the payment or collection of the tax imposed by the fourth section of the act of the General Assembly of the State of Delaware, entitled "An act taxing railroad and canal companies in this State," passed April 8th, 1869, upon the capital stock of the Philadelphia, Wilmington and Baltimore Railroad Company.

2. The court below erred in dismissing the plaintiff's bill, so far as the same prayed an injunction against the payment or collection of the tax imposed by the first section of the said act of April 8th, 1869, upon the net earnings of the Philadelphia, Wilmington and Baltimore Railroad Company.

3. The court below erred in deciding, by dismissing the said bill as aforesaid, that the said tax upon capital stock was not a violation of the contract between the State of Delaware and the Philadelphia, Wilmington and Baltimore Railroad Company contained in the charter of the company.

4. The court below erred in deciding, by dismissing the said bill as aforesaid, that the said tax on capital stock was not an unconstitutional usurpation by the State of Delaware of the right to tax property beyond its jurisdiction.

5. The court below erred in deciding, by dismissing the said bill as aforesaid, that the said tax was not a violation of the clause of the Constitution of the United States which confers upon Congress the power "to regulate commerce with foreign nations and among the several States."

6. The court below erred in deciding, by dismissing the said bill as aforesaid, that the said tax was not an unlawful interference with the constitutional right of transit for persons and property from one State into and through another.

7. The court below erred in deciding, by dismissing the said bill as aforesaid, that the tax imposed upon the net earnings of the Philadelphia, Wilmington and Baltimore Railroad Company was not a violation of the contract between the State of Delaware and the company contained in the charter of the company.

8. The court below erred in deciding, by dismissing the said bill as aforesaid, that the said tax was not an unconstitutional usurpation by the State of Delaware of the right to tax property beyond its jurisdiction.

9. The court below erred in deciding, by dismissing the said bill as aforesaid, that the said tax was not a violation of the clause of the Constitution of the United States which confers upon Congress the power "to regulate commerce with foreign nations and among the several States."

10. The court below erred in deciding, by dismissing the said bill as aforesaid, that the said tax was not an unlawful interference with the constitutional right of transit for persons and property from one State into and through another.

BRIEF OF ARGUMENT.

If any doubt could have existed as to this case being within the jurisdiction of the Circuit Court, it has been removed by the decision in the Railway Company *vs.* Whitton, 13 Wallace, 271, where it was held that a corporation created by the laws of several States must, when sued in any one of the said States, be considered *pro hac vice* a citizen of that State alone.

The Maryland and Pennsylvania citizenship of the Philadelphia, Wilmington and Baltimore Railroad Company cannot, therefore, affect its Delaware citizenship on the question of jurisdiction; and the case presented being that of a suit in the Circuit Court of the United States, by a citizen of Massachusetts against a citizen of Delaware, was undoubtedly one of which the court below had jurisdiction.

That the case presented by the bill was within the cognizance of a court of equity is equally clear.

Dodge *vs.* Woolsey, 18 Howard, 331, where it was held that "where the directors of a bank refused to take the proper measures to resist the collection of a tax which they themselves believed to have been imposed upon them in violation of their charter, this refusal amounted to what is termed in law a breach of trust, and a stockholder had a right to file a bill in chancery asking for such relief as the case might require," is a case identical with the present. There the relief sought by and granted to a stockholder of a corporation whose officers had refused to

take legal measures to protect the corporate property from unlawful taxation was an injunction against the collection of the tax. Here the same relief was sought, and under the same circumstances. The court below entertained no doubt of their authority to grant it; and their refusal to grant it to the full extent of the plaintiff's prayer gave rise to the present appeal.

The case of Tomlinson *vs.* Branch, 15 Wallace, 460, is a recent recognition of the right of a stockholder to ask relief under the circumstances set forth in the bill now before the court.

The first point of the appellant is—

1. *That the tax imposed upon the shares of the capital stock of the Philadelphia, Wilmington and Baltimore Railroad Company by the act of April 8th, 1869, was a violation of the contract between the State of Delaware and the company contained in the charter of the latter.*

The cases of the Wilmington Railroad *vs.* Reid, and the Raleigh and Gaston Railroad Company *vs.* Reid, 13 Wallace, pages 264 and 269, are late decisions of this court on the subject of charter exemption of corporations from taxation. In the former of these cases it was said by Mr. Justice Davis, in delivering the opinion of the court, that "it has been so often decided by this court that a charter of incorporation granted by a State creates a contract between the State and the corporators which the State cannot violate; that it would be a work of supererogation to repeat the reasons on which the argument is founded. It is true that when a corporation claims an exemption from taxation, it must be sure that the power to tax has been clearly relinquished by the State, and if there be a reasonable doubt about this having been done, that doubt must be solved in favor of the State. If, however, the contract is plain and unambiguous, and the meaning of the parties to it can be clearly ascertained, it is the duty of the court to give effect to it, the same as if it were a contract between private persons, without regard to its supposed injurious effects upon the public interests." Page 266.

The exemption relied on in the present case is not founded on an ordinary charter. In assenting to the creation and organization of the present Philadelphia, Wilmington and Baltimore Railroad Company, the State of Delaware contracted with corporations and citizens of other States who at the time owed no allegiance to the State of Delaware, and whose property was not in any way subject to her power of taxation.

The question to be determined was not so much as to what right of taxation should be relinquished, but as to what right of taxation should be assumed by the State. It can be scarcely be thought the negotiation (if such an expression is permissible) between the State of Delaware and the foreign corporations, proceeded on the basis that the State of Delaware would, in the absence of any provision on the subject, acquire an unlimited right to tax the franchises of these corporations. If such a theory had been entertained, it would necessarily have occurred to the parties interested that the States of Maryland and Pennsylvania could exercise the same prerogative, and that the proposed corporation would be subjected to the taxation of three distinct sovereignties in none of which would the corporators be adequately represented.

It may well have been supposed that the property of each divisional corporation would continue to be taxable in the jurisdiction within which it was locally situated; but it could not have been supposed that the entire franchises and property of the united companies would be taxable in each of the three different States. When, then, the State of Delaware prescribed the terms of taxation on which she would consent to the proposed consolidation, these terms may fairly be considered, not in the light of the release, but in that of the acquisition of a privilege; so far, indeed, as the foreign companies were concerned. At least, it may be asked that they be reasonably construed, in view of the circumstances of the case and the relative position of the contracting parties. We may well apply to the charter of the consolidated company the language of the Supreme Court of Pennsylvania, in the case of the Cleveland and Pittsburg Railroad Company *vs.* Speer, 6 P. F. Smith, 332: "The rule

given us for the interpretation of such a charter is found in the opinion of Gibson, C. J., in Brockett *vs.* the Ohio and Pennsylvania Railroad Company, 2 Harris, 244—'The joint act of incorporation (says he) is not only a contract with the company, but a compact between the States that are parties to it. * * * The charter is not to be compared with the charter from an individual State, it is to be liberally construed with reference to the magnitude of the enterprise by giving the company the necessary means to accomplish the purposes of its creation. Like a treaty, it is the law of the contracting States without being subject to interpretation by the local usages of others.'"

The foregoing remarks are not intended to carry the impression that any liberality of construction is required to maintain the case of the appellant; since, with sincere deference to the opinion of the eminent judge by whom the decision of the court below was rendered, it is respectfully submitted that the position of the appellant is consistent with as strict a rule of construction as will not ignore the evident meaning of the legislature.

What then are the provisions of the charter on the subject of taxation?

Before answering this question, it is necessary to observe that by the original act of incorporation of the Wilmington and Susquehanna Railroad Company, (act of January 18th, 1832,) the capital was fixed at eight thousand shares of the par value of fifty dollars per share, amounting in all to the sum of four hundred thousand dollars, and that, by the twenty-third section of the act, the company was required to pay an annual tax of eight per cent. on all dividends which may exceed six per centum on the capital stock actually paid in, and that this was the only measure of taxation specifically prescribed in the act.

Such being the status of the company, the act of July 24th, 1835, providing for its consolidation with the Delaware and Maryland Railroad Company of Maryland, repealed the twenty-third section of the original act, and then enacted (section 4th) "that the said Wilmington and Susquehanna Railroad Company (meaning the consolidated company) shall pay annually into the treasury of the State a tax of one-quarter of one per cent. on

the capital stock thereof of four (hundred) thousand dollars,—the said tax to be paid semi-annually, on the first day of January and the first day of July in each and every year hereafter, the first payment of five hundred dollars to be made on the first day of January next;" and this provision, it is contended, meant that the tax on capital stock, for which the consolidated company was to be liable, should be that specified, viz., a quarter of one per cent. on the sum of four hundred thousand dollars, and that no greater or other tax should thereafter be imposed on its capital. This tax was to be imposed annually *thereafter;* that is, annually during the existence of the consolidated corporation.

It surely cannot be contended that the Legislature of Delaware did not in fact mean that this measure of taxation should be observed, or that the Maryland corporation did not in fact understand that the company into which it proposed to enter would be subject to this measure of taxation in regard to its capital stock and to no other. A suggestion that the State of Delaware might, immediately after the Maryland company had accepted the terms on which it was authorized to unite with the Delaware company, impose a more onerous rate of taxation on the capital stock of the united companies than that specified, would undoubtedly have been treated as an injurious imputation on the good faith of the Legislature of Delaware.

"Every valuable privilege given by the charter," said Mr. Justice McLean, when speaking of a bank charter in the case of the State Bank of Ohio *vs.* Knoop, 16 Howard, 380, "and which conduces to an acceptance of it and an organization under it, is a contract which cannot be changed by the legislature, when the power to do so is reserved in the charter. The rate of discount, the duration of the charter, *the specific tax agreed to be paid* and other provisions essentially connected with the franchise and necessary to the business of the bank cannot, without its consent, become a subject for legislative action."

And in another part of his opinion, in the same case, the learned judge endorses the following extracts from the opinion of the Supreme Court of Ohio, in the case of The State of Ohio *vs.* The Commercial Bank of Cincinnati, 10 Ohio Rep., 535:—

"The General Assembly say to such persons as may take the stock, you may enjoy the privilege of banking, if you will consent to pay to the State of Ohio for this privilege four per cent. on your dividends as they shall from time to time be made. The charter is accepted, the stock is subscribed and the corporation pays or is willing to pay the consideration stipulated, to wit, four per cent." * * "Here is a contract specific in its terms and easy to be understood." "A contract between the State and individuals is as obligatory as any other contract. Until a State is lost to all sense of justice and propriety she will scrupulously abide by her contracts—more scrupulously than she will exact their fulfillment by the opposite contracting party."

These remarks were made with reference to a contract between a State and one of her own corporations. *A fortiori* they are applicable to a contract between a State and a foreign corporation.

One of the earliest cases in which a contract limitation of the taxing power of a State was considered by this court was that of the State of New Jersey *vs.* Wilson, 7 Cranch, 164. These lands had been purchased for certain Indians under an act of the Legislature of New Jersey which, while prohibiting them from selling or leasing the lands, provided that the lands should not thereafter be subject to any tax, any law, usage or custom to the contrary thereof in any wise notwithstanding. The legislature afterwards authorized the Indians to sell the lands, and after they had been sold passed an act repealing the exemption from taxation above referred to. This repealing act was held to be void, although it might well have been contended that the exemption from taxation was granted as a privilege to the Indians alone and not to their successors in the ownership of the lands.

This case is cited merely to show that a contract by which a State is alleged to have released or restricted its power of taxation may be construed adversely to the State, although the language in which it is expressed may admit of a construction leading to a different result.

So in the case already referred to of the State Bank of Ohio *vs.* Knoop, 16 Howard, 369, the provision of the general banking

law of Ohio under which the litigant bank was organized, that each banking company should, semi-annually, set off to the State six per cent. on the profits, which sum should be "in lieu of all taxes to which such company or the stockholders thereof would otherwise be subject," was said by one of the members of the court, who dissented from the opinion of the majority, to require "an addition to ascertain the duration of the rule," *i. e.*, period of exemption. "It may be completed," said the learned judge, (Campbell, J.,) in adding: "by the existing laws for the taxation of banks," or "till otherwise provided by law," or at "the date of such apportionment or dividend;" or, following the argument of the bank, in adding: "during the existence of the banks."

"Whether," he added, "we shall select from the one series of expressions leading to one result, or the expressions leading to another altogether different, depends upon the rules of interpretation applicable to the subject." Page 406.

Yet the majority of the court held that the exemption from taxation must be construed as extending to all future legislation; and let it be observed that this decision involved the construction, not of a special charter, but of a public act, and that it reversed the judgment of the highest court of the State as to the construction of that act.

The case of Dodge *vs.* Woolsey, 18 Howard, 361, was similar in all material respects to that of the Bank *vs.* Knoop, and it affirmed and reiterated the views there expressed. The same remark is applicable to the case of The Mechanics' and Traders' Bank *vs.* Debolt, 18 How, 380; The Mechanics' and Traders' Bank *vs.* Thomas, *ibid*, 384; The Jefferson Branch Bank *vs.* Skelly, 1 Bl., 436; The Franklin Branch Bank *vs.* The State of Ohio, *ibid*, 474; and Wright *vs.* Sill, 2 Bl., 544. In the last three cases the decision appears to have been unanimous.

In McGee *vs.* Mattis, 4 Wallace, 143, it was held that "when a State, in order to promote the drainage and sale of certain swamp lands belonging to it, and which it was desirous of reclaiming, has passed, by way of encouraging purchasers, a law that such lands shall be exempt from taxation for the term of

ten years, and issued transferable scrip receivable for them, a repeal of the exemption tax, so far as it concerns lands paid for either before or after the repeal, with scrip issued before the repeal, impairs a contract of the State with the holders of said scrip." It had been held by the State court, whose judgment was reversed, that scrip holders who had not purchased lands at the date of the repealing act were not parties to the contract, and that the contrary doctrine "would not only do violence to a settled rule of construction," which is, that privileges and exemptions granted by the State shall be strictly construed, and that nothing shall be held to have passed except what is clearly and explicitly granted, but would also be at war with what seems to us the plain reading of the statute." But notwithstanding this application of the theory of strict construction, this court held that the contract extended to scrip holders who purchased after the repeal of the exempton from taxation. And it was also held that the exemption excluded, not merely general taxation, but special or local taxation for making levees and drains,—the provisions under consideration being found in a law providing for the construction of levees and drains and not in a general tax law, in framing which the legislature might reasonably be supposed to have in view general taxation only.

"All contracts," said Mr. Justice Davis, when speaking in the Binghamton Bridge case, 3 Wallace, 14, of legislative contracts, "are to be construed to accomplish the intention of the parties; and in determining their different provisions, a liberal and fair construction will be given to the words, singly or in connection with the subject-matter."

In the case of the Home of the Friendless *vs.* Rouse, 8 Wallace, 431, where a corporation claimed immunity from subsequent taxation under a clause in its charter that "all property of said corporation shall be exempt from taxation," and it was argued that the legislature had not declared its intention to bind the State never to impose any tax, that the language did not expressly say that the State was to be *forever* bound, and that the law would not imply such a meaning." The court said, "There is no need of supplying any words to ascertain the legislative

intention. To add the word 'forever' after the word 'taxation' would not make the meaning any clearer. It was undoubtedly the purpose of the legislature to grant to the corporation a valuable franchise, and it is easy to see that the franchise would be of comparatively little value if the legislature, without taking direct action on the subject, could, at its will, resume the power of taxation." Page 437. And yet it is impossible to deny that the words used by the legislature might have been construed as referring to then existing taxation.

In the Wilmington, &c. Railroad Company *vs.* Reid, 13 Wallace, 264, a charter exempting "the property" of the railroad company from taxation was held to exempt the franchise, although it was contended that the franchise was something distinct from property.

In the case of the Raleigh and Gaston Railroad Company *vs.* Reid, *ibid*, page 269, the charter of the company contained an exemption from taxation for a term of fifteen years; but, after the expiration of this limitation, the legislature was to be at liberty to tax the individual shares of the stockholders whenever their annual profits exceeded eight per cent., provided that the tax did not exceed twenty-five cents a share per annum; and it was held that a tax levied on the company after the expiration of the fifteen years, but before the annual profits had reached eight per cent., was a violation of the contract.

"When a statute," said Mr. Justice Davis, in delivering the opinion of the court, "limits a thing to be done in a particular mode, it includes a negative of any other mode."

This case seems to be directly in point. The legislature had asserted its right to tax the stock in a particular way after the expiration of a certain period, but it had not expressly said that it would not tax the stock in some other way, or that it would not tax the lands or personal property of the company; but the court held that the mode of taxation specified in the charter excluded any other mode. In the present case the legislature agreed that the tax on the capital stock of the consolidated company should be one thousand dollars a year, and by so doing did they not agree that it should not be ten thousand dollars or

twenty thousand dollars or anything else than one thousand dollars?

In Gordon *vs.* the Appeal Tax Court, 3 Howard, 133, where the charters of certain banks had been extended upon certain conditions, and the extending act, after providing for the payment of an annual tax on each share of the capital stock, declared that no "further" tax or burden should be imposed upon them during the continuance of their charters under the act, it was held that a tax, not upon the banks, but upon all shares owned by any residents of the State in any bank or other corporation has, so far as it applied to shares of stock held in the banks whose charters had been thus extended, was a violation of the contract not to impose any "further" tax on such banks.

In Johnson *vs.* The Commonwealth, 7 Dana, 338, where the charter of a bank required the cashier to pay annually to the Commonwealth twenty-five cents on each one hundred dollars of stock paid in, which should be "in full of all tax or bonus," and then provided that the legislature might increase or diminish the same, but that at no time should the tax exceed fifty cents on each one hundred dollars of stock paid in, it was held by the Court of Appeals of Kentucky that the proviso was a limitation on the power to tax the stock; that it was an inviolable contract between the State and the stockholders, and that the power to augment the tax was a power to tax the corporation only and not the individual stockholders.

The case of the State *vs.* Hicks, 9 Yerger, 487, decided that a legislative exemption of certain lands vested in trustees for the use of an academy continued even after the lands had been sold by the trustees.

"By the charter of the Union Bank of Tennessee it was stipulated 'that, in consideration of the privileges granted by this charter, the bank agrees to pay to the State annually the one-half of one per cent. on the amount of capital stock paid in by the stockholders other than the State.'" Held, that by this section the State contracted that the bank should enjoy the privileges conferred, one of which was to use its capital for all

legitimate banking purposes, and that a law imposing an additional tax upon the capital stock of the institution impaired the contract and was unconstitutional. Union Bank *vs.* The State, 9 Yerger, 490.

The case of The Easton Bank *vs.* The Commonwealth of Pennsylvania, 10 Barr, 442, is referred to in the opinion of Mr. Justice Strong in the court below. That case decided that a bank rechartered under a law relating to it and a number of other banks, which provided that dividends should be taxed at a certain rate, was not exempt from the operation of a subsequent general law which increased the tax on dividends.

The correctness of this decision may well be questioned. It certainly cannot be reconciled with decisions of this court which have already been referred to. That it disregarded the *actual* intention of the legislature and the practical interpretation of the law for many years by the financial officers of the State is apparent from the facts stated in the report of the case. The general law taxing dividends at a higher rate than that specified in the law rechartering the banks was passed on the 1st of April, 1835; and almost contemporaneously with the passage of the act, viz., on the 7th of April, 1835, the charter of the bank, which otherwise would have expired on the first Wednesday of May, 1837, was extended for fifteen years from that date by an act which provided that the bank should pay, during the period of the extension, the full tax on dividends imposed by the general law of April 1st, and it was not until ten years afterwards that it was claimed that the dividends paid between the 1st of April, 1835, and the first Wednesday of May, 1837, were taxable under the general law of April 1st, 1835.

In the much later case of the Iron City Bank *vs.* The City of Pittsburg, 1 Wright, 340, the same court that made the decision in the Easton Bank case declared the following to be one of the conclusions derivable from a review of the decisions of this court on the subject of charter contracts between the State and corporations:—

"If the legislature, in creating a corporation, prescribe a rate of taxation, and expressly release the power to impose further

taxes, *or do not expressly reserve the power to themselves*, a subsequent tax law does impair the obligation of the contract, and is void:"—a conclusion which is plainly inconsistent with the decision in the Easton Bank case.

It is further submitted, that for reasons already stated, the case now before the court is plainly distinguishable from that of the Easton Bank. The relative position of the contracting parties was entirely dissimilar. The fact, too, that four hundred thousand dollars of the preferred capital stock of the consolidated Wilmington and Susquehanna Railroad Company was designated as the taxable portion of the capital, virtually implied that the remainder of the capital was not to be taxed.

But the contract immunity from taxation claimed for the capital stock of the present consolidated Philadelphia, Wilmington and Baltimore Railroad Company rests on other grounds.

The nineteenth section of the Maryland act by which the "Delaware and Maryland Railroad Company" was incorporated contained the following provision:—"And the shares of the capital stock of said company shall be deemed and considered personal estate, *and shall be exempt from the imposition of any tax or burthen by the State's assenting to this law, except upon that portion of the permanent and fixed works of said company which may lie within the State of Maryland;* and that any tax which shall hereafter be levied upon said section shall not exceed the rate of any general tax which may at the same time be imposed upon similar real or personal property of the State for State purposes."

The first section of the Delaware act of July 24th, 1835, providing for consolidation of the Wilmington and Susquehanna Railroad Company of Delaware with the Delaware and Maryland Railroad Company of Delaware, declared that the two companies, when consolidated, should be styled "The Wilmington and Susquehanna Railroad Company," and that by and under that corporate name the holders of the stock of the said railroad companies should "*hold, possess and enjoy all the property, rights and privileges and exercise all the powers granted to and vested in the said*

railroad companies, or either of them, by this or any other law or laws of this State or of the State of Maryland."

These terms are as broad and general as they could be made. The consolidated company was to possess every *right and privilege* which *either* of the original companies possessed or enjoyed under any law of Maryland or Delaware. It was not said that the consolidated company should possess and enjoy every right, privilege, &c. which the laws of Delaware conferred on the Delaware company. The Pennsylvania act of consolidation was much more guarded. It provided that the consolidated Philadelphia, Wilmington and Baltimore Railroad Company should have all the rights, powers and privileges which, by any law of the Commonwealth of Pennsylvania, were then vested in the original Philadelphia, Wilmington and Baltimore Railroad Company of Pennsylvania. A comparison of the two acts shows at once the wider scope of the Delaware act.

It is said, in the opinion delivered in the court below, that the language of the Delaware act authorizing a union of the companies, "is not that they shall, when united, have all the rights and immunities in this State (Delaware) which each of them has in the State by which it was chartered." But, with great respect, it is submitted that the act of Delaware does say so. It is true that the phrase, "in this State," is not actually used; but the legislature which passed the act was the Legislature of Delaware, and they were confirming rights and privileges to be exercised and enjoyed in Delaware, and not elsewhere.

The appellant, therefore, contends that, as immunity from taxation of its capital stock was a privilege which the Maryland company enjoyed, the consolidated company succeeded to the same immunity.

The stock of the Delaware and Maryland Railroad Company is now represented by and forms an integral part of the stock of the consolidated company, and when the stock of the latter company is taxed that of the former is taxed also.

The theory that the Delaware act of consolidation was merely intended to secure to the consolidated company all the privileges in Maryland which the Maryland company possessed, and in

Delaware all the privileges which the Delaware company formerly possessed, ignores the express terms of the Delaware act, and imputes to the Delaware Legislature the assumption of legislative power in the State of Maryland.

If the Maryland charter had conferred a power of levying assessments upon the stock of the Maryland company, would not the consolidated company have succeeded to that power under the terms of the Delaware act? and could it have been said that such a power, if exercisable at all, would be exercisable in Maryland only, and with reference to the stock of the Maryland company, which then had been merged and lost in the stock of the consolidated company?

It is undoubtedly true that the exemption from taxation contained in the original charter of the Delaware and Maryland Railroad Company referred to Maryland taxation only; but still it was an exemption from State taxation, and as such a *privilege* of the company; and when this, with all other privileges of the Maryland company, was conferred upon the consolidated company in Delaware, the latter company thereby acquired the privilege of exemption of its capital stock from State taxation, and that in Delaware meant Delaware State taxation.

What considerations of justice or policy should prepossess us against this construction? It could not have been thought at the time that the State of Delaware would assert the right to tax property in Maryland represented by the stock of the Maryland corporation or the persons of the holders of that stock. The assertion of such a right would probably not have been acquiesced in either by the stockholders or the State of Maryland. And can it be presumed that the immunity from taxation in its own State possessed by the Maryland corporation was meant to be coupled with liability to taxation in another State?

The case of The Philadelphia, Wilmington and Baltimore Railroad Company *vs.* Maryland, 10 Howard, 376, referred to in the opinion of Mr. Justice Strong, and which has recently been cited and approved by this court in Tomlinson *vs.* Branch, 15 Wallace, 460, is not inconsistent with the conclusion now contended for. It was there decided that the portion of the

railroad of the consolidated company which belonged formerly to the Baltimore and Port Deposit company was taxable in Maryland, notwithstanding the exemption in the charter of the Delaware and Maryland company. It is somewhat difficult to see how this immunity could have been claimed in any view of the case, since the "permanent and fixed works" of even the Delaware and Maryland company were taxable under its charter; but, be that as it may, the opinion of the court certainly leads to the conclusion that even if the railroad of the latter company had been entirely exempt from taxation, the same privilege would not have attached to the railroad of the Baltimore and Port Deposit company under the terms of the Maryland acts of consolidation.

But this conclusion is not in conflict with that now urged by the appellant. Let it be assumed that the railroad of the Maryland and Delaware company was exempt from taxation. This exemption was then continued to the consolidated Wilmington and Susquehanna Railroad Company, formed by the union of the Delaware and Maryland company with the Wilmington and Susquehanna company of Delaware. This latter company was afterwards consolidated with the Baltimore and Port Deposit company and with the Philadelphia, Wilmington and Baltimore Railroad Company of Pennsylvania, under an act of the Maryland Legislature, which provided that "the body corporate so formed shall be entitled, within this State, to all the powers and privileges and advantages *now belonging to the two first above-named corporations*," meaning the consolidated Wilmington and Susquehanna and the Baltimore and Port Deposit Railroad Companies. Now, it will be observed that the law did not say that the consolidated company should have all the privileges which *either* of the original companies had, and that even if it had so said it could hardly be presumed that the legislature meant that the privilege which exempted certain specific property from taxation should attach to an entirely different property merely because it had agreed that a joint ownership of the two properties should supersede the former ownership in severalty.

But suppose that the Legislature of Maryland had, after the

consolidation, undertaken to tax the capital stock of the Philadelphia, Wilmington and Baltimore Railroad Company, could this have been done without violating the exemption contained in the charter of the Delaware and Maryland company?

This question must be argued in the negative. But the case supposed does not seem to be as palpable a violation of contract as that now before the court. It might be said in the one case that the stock of the Delaware and Maryland Railroad Company was no longer in existence, and that the State had never promised not to tax the stock of the Philadelphia, Wilmington and Baltimore Railroad Company. But in the present case the State of Delaware did promise that the consolidated company should enjoy (necessarily meaning in Delaware) every right or privilege which either of the constituent companies had enjoyed in Maryland and Delaware respectively; and exemption of its capital stock from taxation was one of the privileges enjoyed by the Maryland company.

SECOND POINT.—*The appellant contends that the tax on capital stock imposed by the fourth section of the act of April 8th, 1869, was an unlawful usurpation by the State of Delaware of the right to tax property beyond its jurisdiction.*

The tax, it will be remembered, is imposed, in the first instance, upon the actual cash value of every share of the capital stock of every railroad and every canal company in Delaware; but with a proviso that where the line of railroad or canal belonging to any company liable to the tax lies partly in Delaware and partly in an adjoining State or States, "such company shall only be required to pay the tax aforesaid on such number of the shares of its capital stock as will be in that proportion to the whole number of shares of such capital stock which the length of said railroad or canal within the limits of this State bears to the whole length of such railroad or canal."

The tax, therefore, whether considered as a tax upon shares of stock as representing the property of the corporation, or as representing the property of the individual stockholders, was not

imposed upon the Delaware property of the corporation or upon property of the Delaware stockholders only; and if it can be sustained at all, must be sustained on a theory which would sustain the taxation of the entire capital stock of the company by each of the three States of Delaware, Maryland and Pennsylvania, irrespective of the amount invested in each State, or of the residence of the stockholders. For it is obvious that any apportionment of taxation according to the mileage of the road in each State must be purely arbitrary. No one would expect to find that the ratio of mileage of the road in Delaware, to its entire length, was the same as that of the capital invested in Delaware to the entire capital of the company, or that the proportion of Delaware stockholders could be ascertained in the same way. In fact, it is admitted in this case, that while the entire length of the railroad is $99\frac{74}{100}$ miles, of which $23\frac{8}{10}$ are in Delaware, the value of the property of the company locally situated in the State of Delaware is much less than that which would be indicated by the ratio of these figures; that in the apportionment of the stock of the consolidated company at the time of its organization 19,000 shares were awarded to the stockholders of the Baltimore and Port Deposit company of Maryland, 10,000 shares to the Philadelphia, Wilmington and Baltimore Railroad Company of Pennsylvania, and but 16,000 shares to the consolidated Wilmington and Susquehanna Railroad Company of Delaware and Maryland; and that of the 186,088 shares of the capital stock of the present company, 184,524 were held by persons who were neither citizens nor residents of Delaware. (See Statement of Facts, pages 32, 28 and 31 of printed record.)

Treating the question then as practically and substantially whether the State of Delaware can lawfully tax the entire capital stock of the Philadelphia, Wilmington and Baltimore Railroad Company, we have a question which is decisively answered in the negative by the judgment of this court in the case of Jackson *vs.* The Northern Central Railroad Company, 7 Wallace, 262.

It was there held that "A State has no power to tax the interest on bonds secured in this case by mortgage given by a

railroad corporation, and binding every part of the road, when the road is partially in another State; one road incorporated in two States."

The decision was placed on the ground that to permit such taxation would be giving effect to State legislation upon property and interests lying beyond the State jurisdiction.

It seems plain that the case of the appellant is much stronger than that presented in Jackson *vs.* The Northern Central Company. The bondholder and mortgager there was not an owner of the railroads in the two States, as is shown by Mr. Justice Field in the opinion of the court in the case of the State tax on foreign-held bonds. (Railroad Company *vs.* Pennsylvania, 15 Wallace, 300.) He had merely an indirect and collateral interest in the railroad by reason of its being mortgaged to secure his bonds, and yet even that indirect and collateral interest was held sufficient to protect his bonds from taxation by one of the States within whose boundaries the railroad lay. Plainly, then, the non-taxability of the railroad was the foundation of the decision; and if the bonds were not taxable merely because they were indirectly connected with the railroad, *a fortiori*, the capital stock of the railroad company of which the railroad is a component and principal part cannot be taxable.

It would appear from the report in Jackson's case that the State taxation of the bonds of the company was not apportioned, as in this case, according to the proportionate length of the railroad in the State; but, nevertheless, such was the fact, according to a practice of the financial officers of the State, which was brought to the attention of this court in the case already referred to. (15 Wallace, 302.) It is not perceived that this peculiarity would have affected the decision, even if it had been made an element of the case.

The reasoning of the learned judge by whom the opinion was delivered in Jackson's case is said, by Mr. Justice Field, in the Railroad Company *vs.* Pennsylvania, to be "open, perhaps, to some criticism." (15 Wallace, 319.) The criticism suggested applies, however, merely to the reasoning, by which the non-taxability of the bonds was deduced from the non-taxability of the

railroad. The decision is, nevertheless, said to be "authority for the doctrine that property lying beyond the jurisdiction of the State is not a subject upon which her taxing power can be legitimately exercised," and it is added that "it would seem that no adjudication should be necessary to establish so obvious a proposition." 15 Wallace, page 319.

The case in 15 Wallace is itself an express and authoritative adjudication of the principle that a State's power of taxation cannot operate upon property beyond her jurisdiction. And it may be said of the tax in question now, as was said of the tax in controversy in that case, that it is only one of the many cases where, under the name of taxation, an oppressive exaction is made without constitutional warrant, amounting to little less than an arbitrary seizure of private property. It is, in fact, a forced contribution levied upon property held in other States, where it is subjected, or may be subjected, to taxation upon an estimate of its value. *Ibid.*, page 321.

THIRD POINT.—*That the tax on capital stock imposed by the fourth section of the act of April 8th, 1869, was a violation of the clause of the Constitution of the United States which confers upon Congress the power "to regulate commerce with foreign nations and among the several States."*

FOURTH POINT.—*That the said tax was an unlawful interference with the constitutional right of transit for persons and property from one State into or through another.*

These two points may be considered together.

If the tax in question does really operate as a regulation of commerce between the States, or if it impedes or obstructs the right of passage for persons or property from one State into another, it must be held unconstitutional and void.

That the imposition of a tax upon the capital invested in the railroad between Philadelphia and Baltimore does really regulate the inter-State commerce upon the railroad, seems to be a self-evident proposition; and that such a tax does interfere with

and burthen the right of passage for persons or property from one State to another may be said to be equally evident.

It is undoubtedly true that the same objections could be made to a State tax upon the railroad or the capital stock or the earnings of a railroad company where operations were confined to the territory of the State which levied the tax; and it is equally true that a tax upon horses and wagons in one State would to some extent affect commerce between the States. But the answer to the argument implied by this suggestion is, that the agencies and instruments of commerce must be subject to the taxation of the States within whose jurisdiction they exist, and the power of Congress to regulate commerce between the States must *ex necessitate vei* be qualified by the indirect operation of the exercise of this power as well as of the State power to regulate its own domestic commerce. Where, however, a State undertakes to tax, even within its own jurisdiction, inter-State commerce, much more when it undertakes to tax inter-State commerce, or the agencies or instrumentalities of inter-State commerce, beyond its jurisdiction, it usurps the prerogative of the Congress of the United States, and infringes the constitutional rights of citizens of the United States, since its taxing power does not extend to such subjects.

If the State of Delaware had, in plain terms, imposed a tax upon the capital invested in the Pennsylvania and Maryland sections of the Philadelphia, Wilmington and Baltimore Railroad, or the earnings derived from the use of these sections, the tax would probably be admitted by all to be a burthen laid upon inter-State commerce or intercourse. Those who denied it to be such would have to establish that a tax upon a railroad used almost entirely for commerce and intercourse between the States was not a tax upon such commerce or intercourse.

It is said by Mr. Justice Miller, in the dissenting opinion delivered by him in the case of "The State tax on railway gross receipts," that a "railroad or canal company differs from corporations for banking, insurance or manufacturing purposes in this, that while their business is only remotely or incidentally connected with commerce, *the business of roads and canals, namely, trans-*

portation of persons and property, is commerce. So much of said commerce as is exclusively within the State is subject to its regulations by taxation or otherwise, but that which carries goods from or to another State is exempted by the Constitution from its control." 15 Wallace, page 299.

But the tax actually imposed by the State of Delaware is a tax upon the railroad in Maryland and Pennsylvania. A certain portion of the entire capital of the company is taxed, and that portion represents the railroad in the three States. It is an admitted fact in this case that the capital thus selected over-represents, and greatly over-represents, the property of the company locally situated in Delaware. The excess taxed is invested in Maryland and Pennsylvania. It has already been attempted to be shown that the taxing power of Delaware cannot be exercised over property beyond its jurisdiction; and as the property here sought to be taxed is a railroad extending through three States and used almost entirely for inter-State intercourse and the earnings of that railroad, it is contended that this tax is an unconstitutional interference with, and taxation of, inter-State commerce and intercourse.

The question is one of no little gravity. If this tax can be sustained then it would seem to follow that Pennsylvania, Maryland and Delaware can each and all tax the entire capital and the entire earnings of this one railroad; and that the same rule would hold good in the case of a railroad chartered by a much greater number of States. The effect of such a system of taxation upon the commerce and intercourse between the States is too obvious to be stated. "The inter-State commerce of to-day far exceeds in value that which is foreign, and it is of immense importance that it should not be shackled by restrictions imposed by any State, in order to place on others the burden of supporting its own Government, as was done in the days of the helpless Confederation." 15 Wallace, 299.

The only authorities that need be referred to in this connection are the case of Crandall *vs.* Nevada, 6 Wallace, 35, and that of the State freight tax. The Philadelphia and Reading Railroad Company *vs.* The State of Pennsylvania, 15 Wallace, 233.

FIFTH POINT.—*That the tax upon the net earnings of the Philadelphia, Wilmington and Baltimore Railroad Company imposed by the first section of the act of April 8th, 1869, was a violation of the contract between the State of Delaware and the company contained in the charter of the company.*

SIXTH POINT.—*That the said tax was an unconstitutional usurpation by the State of Delaware of the right to tax property beyond its jurisdiction.*

SEVENTH POINT.—*That the said tax was a violation of the clause of the Constitution of the United States which confers upon Congress the power "to regulate commerce with foreign nations and among the several States."*

EIGHTH POINT.—*That the said tax was an unlawful interference with the constitutional right of transit for persons and property from one State into or through another.*

Any argument in support of the above propositions would be a repetition of what has already been said on the subject of the tax on shares of capital stock.

It surely will not be contended that if the State of Delaware is, for any reason, prohibited from taxing the capital stock of the railroad company, she is not equally prohibited from taxing the income from that capital. A contract not to tax a sum of money would hardly be observed if the interest of the money were taxed.

In the case of the Iron City Bank *vs.* The City of Pittsburg, 1 Wright, 37 Pennsylvania State Reports, 340, it was held that a tax upon the discount business of a bank was liable to all the legal objections that could be made to a tax upon the capital stock of the bank.

The question was raised by the appeal taken by the defendants, Clark and Ocheltree, as to the constitutionality of the tax imposed by the third section of the act of April 9th, 1869, upon the *use* of locomotives and cars in the State of Delaware. The

court below decided the tax to be unconstitutional, and it is not thought necessary to add anything to what is said in the opinion of Judge Strong in vindication of this decision, except a reference to the recent case of the State freight tax—The Philadelphia and Reading Railroad Company *vs.* Pennsylvania, 15 Wallace, 232.

J. E. GOWEN,
G. C. GORDON,
J. P. COMEGYS,
For William Minot, Jr.

In the Supreme Court of the UNITED STATES.

WILLIAM MINOT, JR.,

vs.

THE PHILADELPHIA, WILMINGTON AND BALTIMORE RAIL ROAD COMPANY, WM. J. CLARK AND M. B. OCHELTREE.

Appeals from the decree of the Circuit Court of the United States for Delaware District.

Paper Book of WM. J. CLARK and M. B. OCHELTREE.

In the Supreme Court of the UNITED STATES.

Appeals of WM. MINOT, JR. and of W. J. CLARKE and of M. B. OCHELTREE from the final decree in equity of the Circuit Court of the United States for the District of Delaware, in the suit of WM. MINOT, JR., a citizen of the State of Massachusetts *vs.* the PHILADELPHIA, WILMINGTON and BALTIMORE RAIL ROAD COMPANY, a body corporate of the State of Delaware, and WILLIAM J. CLARKE and M. B. OCHELTREE, citizens of the State of Delaware. } No.

The first appeal (that of Wm. Minot, Jr.,) is docketed by the style of Wm. Minot, Jr., appellant, vs. the Philadelphia Wilmington and Baltimore Rail Road Company, Wm. J. Clarke and M. B. Ocheltree; and the second appeal, (that of Wm. J. Clarke and M. B. Ocheltree,) is dockted by the style of Wm. J. Clarke and M. B. Ocheltree vs. William Minot, Jr.

This brief of the appellees is filed in the first appeal.

The abstract of the case as set forth in the paper book of Wm. Minot, Jr., (see pp. 1 to 12,) so far as the same relates to the facts of the case is assented to by the Defendants in Error, Wm. J. Clarke, who was, at the time of filing the said bill, Treasurer of the State of Delaware, and Maxwell B. Ocheltree, who was the collector of the taxes, the legality of which was brought into controversy by the bill of complaint of Wm. Minot, Jr.

The Philadelphia, Wilmington and Baltimore Rail Road Company is a body corporate of the State of Delaware, and Wm. Minot, Jr., is a citizen of the State of Massachusetts and a holder of certain shares in the capital stock of the said company, and as alleged by article 14th of the answer of the Defendants, (see record p. 22,) the action of the Complainant was in collusion with the said corporation with intent to give jurisdiction of the questions at issue between the parties to the Circuit Court of the United States, and that the whole proceedings, so far as the said Rail Road Company and the Complainant are concerned, have been conducted by the legal counsel of the said company, who have appeared and filed the paper book of the Plaintiff in Error in this Court.

The jurisdiction of the Circuit Court for the District of Delaware is not, however, denied by the Defendants in Error, but the above facts are referred to merely that it may be understood and for the proper decision of this case that the contest is virtually between the State of Delaware, in her attempt to exercise her powers of taxation over the property and franchises of a corporation created by and existing under her laws and the effort of that corporation to emancipate itself and its property from the power of the State so to tax it.

It will be insisted on behalf of the Appellees that the power to tax the property and franchises of the corporation in question has been justly and lawfully exercised by the State of Delaware in the passage of an act of the General Assembly of that State, entitled "an Act taxing Rail Road and Canal companies in this State, passed April 8th, 1869.

"SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Delaware in General Assembly met,* That all railroad and canal companies *incorporated under the laws of this State, and doing business within the State or*

which may hereafter be incorporated in this State, shall, on the first day of January next, after the passage of this act, and on the first day of January in each and every year thereafter, *in addition to the taxes now* imposed upon such companies by the laws of this State, pay to the State Treasurer, for the use of the State, *a tax of three* per centum upon *the net earnings or income* received by said railroad or canal company *from all sources* during the preceding year: *Provided*, That where the line of Railroad or canal belonging to any company liable to the said tax lies partly in this State and partly in an adjoining State or States, the part or share of such net earnings or income of such company only shall be subject to the said tax as will be in that proportion to the whole net earnings or income of such company which the length of said road or canal within the limits of the State bears to the whole length of such road or canal.

"SEC. 3. That in addition to the tax upon net earnings of income provided for in the first section of this act, every railroad company incorporated by this State, and doing business in this State, shall pay to the State Treasurer, for the use of the State on the first day of January next, or within thirty days thereafter, and on the first day of January in each and every year thereafter, or within thirty days from such times, *a tax of one* hundred dollars for the use in this State of each locomotive belonging in whole or part to such company, and at any time during the preceding year *used by said company within this State*, and twenty-five dollars for the use in this State of each passenger car belonging in whole or part to such company, and at any time during the preceding year used by said company within this State, and ten dollars for the use in this State of each freight car of every description, abd each truck belonging to such company, and at any time during the preceding year used by said company within this State.

SEC. 4. That every railway company and every canal company incorporated by or under any law of this State, and doing business within this State, shall in addition to other taxes imposed by law on the first day of July next, after the passage of this act, and on the first day of July in each and every year thereafter, or within thirty days from such time, pay unto the State Treasurer, for the use of the State, *a tax of one-fourth of one per centum* upon the actual cash value of every share of the *capital stock* of such

company." * * * * * * * *Provided*, That where the line of railroad or canal belonging to any company liable to said tax lies partiy in this State and partly in an adjoining State or States, such company shall only be required to pay the tax aforesaid on such number of the shares of its capital stock as will be in that proportion to the whole number of shares of such capital stock which the length of said railroad or canal within the limits of this State bears to the whole length of such railroad or canal."

The collection of these taxes was provided for by requiring the president or treasurer of the company to furnish the State Treasurer with statements "showing the net earnings or income of such company from all sources during the preceding year," "the number of locomotives, passenger cars, freight cars of every description and trucks belonging to such company and used or employed at any time during the preceding year within the State, and the number of shares of the capital stock of such company, with an estimate and appraisement of the actual cash value of each share of such capital stock," and to pay the taxes chargeable upon the several items included in these statements.

And it is further insisted on behalf of the Defendants in Error that by the passage of the act of April, 1869, there was no violation of any contract on the part of the State of Delaware which may be contained in the charter of the "Wilmington and Susquehanna Rail Road company," passed January, 1832, or the supplement to the last mentioned act passed July 24th, 1835, by which the "Wilmington and Susquehanna Rail Road company" was permitted to consolidate its stock and unite its line of rail road with the "Maryland and Delaware Rail Road company," a corporation of the State of Maryland; or by the consent of the said State contained in the last mentioned act, to the union and consolidation of the said companies so chartered by Delaware, with other companies existing under charters granted by the States of Pennsylvania and Maryland respectively.

Which union was effected in February, 1838 by articles

of agreement between the said corporations, (see p. 27 of record,) and which was arranged by the said companies on terms agreed upon among themselves, of which agreement the State of Delaware had no knowledge; to which she was not a party, and over which she neither had, nor attempted to exercise any control except, as heinbefore stated, of permitting such union and consolidation to be formed, when in the opinion of the said companies, the same should be desirable in furthering their own interests.

The present "Philadelphia, Wilmington and Baltimore Rail Road company" was thus formed in the year 1838, by the consolidation of the Wilmington and Susquehanna Rail Road company of Delaware and Maryland, the Baltimore and Port Deposit Rail Road company of Maryland, and the original Philadelphia, Wilmington and Baltimore Rail Road company of Pennsylvania,—the Wilmington and Susquehanna Rail Road company being at the time a company which had been formed in the year 1836 by the consolidation of the Wilmington and Susquehanna Rail Road company of the State of Delaware, and the Delaware and Maryland Rail Road company of the State of Maryland.

And the three lines of rail road which previous to the consolidation had been separately operated and managed under their respective charters in the States of Pennsylvania, Delaware and Maryland became a connected line under the management of a single company, the present "Philadelphia, Wilmington and Baltimore Rail Road company."

It is contended on behalf of the Plaintiffs in Error, (see p. 17 Paper Book,) that the State of Delaware is prohibited from imposing the taxes contained in the law of April 1869 because in the amended charter of the "Wilmington and Susquehanna Rail Road company," passed July 24th,

1835, the said company was authorized to issue eight thousand shares of capital stock of the par value of fifty dollars per share, upon which a tax of one-quarter of one per cent was imposed, and although there was no express limitation in the said charter upon the power of the company to issue a greater number of shares should it be desired by them, nor did the said act contain any expression of an intention to exempt the company from any further additional taxation, nor that the tax then imposed was a consideration for the granting of said charter, or was to be received as a bonus or in lieu of any or all other taxes, yet that the same created a contract between the State of Delaware and the said company, that should exempt the latter *forever* from any subsequent and additional taxation.

And it is also contended on behalf of the Plaintiff in Error, (see his Paper Book p. 27,) that the General Assembly of the State of Maryland by their act incorporating the Delaware and Maryland Rail Roads passed in December, 1831, and authorizing the construction of a line of road from the Maryland line to a point on the Susquehanna river, and within the limits of the State of Maryland, provided "that the *shares of the capital stock of said company shall be deemed and considered personal estate, and shall be exempt from the imposition of any tax or burthen by the State's assenting to this law, except upon that portion of the permanent and fixed works of said company which may be within the State of Maryland.*" And that any tax which shall hereafter be levied *upon said section* shall not exceed the rate of any general tax which may at the same time be imposed upon similar real and personal property of the State for State purposes."

And that the State of Delaware in the act of July 24th, 1835, permitting the consolidation of the "Wilmington and Susquehanna Rail Road" incorporated by *her* laws,

with the "Delaware and Maryland Rail Road," incorporated by the law of Maryland, provided that the holders of the consolidated stock should "*hold, possess and enjoy all the property, rights and privileges and exercise all the powers granted to and vested in the said rail road companies, or either of them, by this or any other law or laws of this State or of the State of Maryland.*"

And that by this language, was formed a contract, which extended the effect of the limitation of taxation by the State of Maryland over one of the fragments of the line of rail road within *that* State, to the entire line running through the States of Pennsylvania, Maryland and Delaware.

These claims by the Plaintiff in Error are stated in his first and fifth points of argument (see p. 17 and p. 37 of his Paper Book.)

On behalf of the Defendants in Error, we reply, that the purport and natural meaning of the language of the Delaware laws in question forbids any such construction as is contended for on the other side.

1. That the rule of construction adopted by this Court, from the earliest case brought before it on this subject, down to the present day is, that public grants are to be strictly construed against the grantee; that nothing passes by implication and nothing passes but what is granted in clear and explicit terms.

2. That the right of taxation by a State is a cardinal and and necessary principle for the existence of State's government and extends to all property of every nature within her limits which is derived from or protected by its government and hence is held subject to its wants in taxation and to certain public uses in war and in peace—but does not extend to those means which are employed by Congress to carry into execution the powers conferred on the Federal Constitution.

1 Wallace - R. 41

And that the power of taxation being of vital importance is never to be presumed to be released.

The consideration of these two propositions can be conveniently blended and after the frequent decisions in this Court it is scarcely considered necessary to cite authorities in their favor.

The language, however, of a few later decisions has been so emphatic that it may be well introdued at this point.

In Commonwealth against Bank, 10th Barr p. 450.

"If such an exemption exists it must be the result of deliberate intention to relinquish this prerogative of sovereignty distinctly manifested. There is nothing more than a simple declaration that the tax *then* to be paid by this institution, and we look in vain for the slightest intimation of an agreement or even understanding between the parties, that this tax should not be increased during the existence of the charter."

This court has also decided that the charter of a bank is a franchise, which is not taxable as such, if a price has been paid for it, which the Legislature has accepted, *with a declaration that it was to be in lieu of all other taxation.* Gordon vs. Appeal Tax Court, (3 How. 133.

The rule of construction in such a case is, that the grant of privileges and exemptions to a corporation are to be strictly construed against the corporators, and in favor of the public; that nothing passes but what has been granted in clear and explicit terms; and that neither the right of taxation, nor any other power of sovereignty will be held by this Court to have been surrendered, unless such surrender has been expressed in terms too plain to be mistaken.

In every case, the vital importance of a State's right to tax was considered, and the relinquishment of it by a State has never been presented. The language of the Court has

always been cautious, and affirmative of the right of the State to impose taxes, unless it has been relinquished by unmistakable words, clearly indicating the intention of the State to do so. This Court has always said and acted upon it. "We will not say that a State may not relinquish its right to tax in particular cases, or that a consideration sufficiently valuable to induce a partial increase of it may exist, but as the whole community is interested in preserving it undiminished, it has a right to insist that its abandonment ought not to be presumed in a case in which the deliberate purpose of a State to abandon it, does not appear."

(1st Black, Jefferson Bank vs. Skelly, 442.)

In the clear and forcible language of Mr. Justice Strong in his opinion, filed in the present case, (see p. 8 of opinion,) "it must be ruled as the right (of taxation) is essential to the existence of the body politic, nothing less than that which is equivalent to an express surrender of it by a binding contract, will avail to enable any person or corporation successfully to assert an exemption from liability to its exercise."

See also Charles River Bridge vs. Warren Bridge.—11th Peters, 544.

Providence Bank vs. Billings.—4th Peters, p.

Richmond Rail Road vs. The Louisa Rail Road.—13th Howard, 81.

State of Louisiana vs. Nathan.—8th Howard.

West River Bridge vs. Dix.—6th Howard, 539.

Washington University vs. Rouse.—8th Wallace, 439.

And note the strong dissenting opinions of Mr. Justice Miller, the Chief Justice and Mr. Justice Field, denying the power of a legislature to deprive succeeding legislatures of the power to tax.

Home of the Friendless vs. Rouse.—Ibid, 430.

Bank of Pennsylvania vs. Commonwealth.—7th Harris, 154.

Lane County vs. Oregon
7 Wallace - p. 71

Saving's Society vs. Coite.—6th Wallace, 594.
The "Philadelphia, Wil. and Baltimore Rail Road Company vs. Maryland.—10th Howard, 376

is not only a general authority for the principle we have stated, but is a decision of the present case itself, and the question was there raised whether the qualified exemption from taxation by the State of Maryland of the original line of road of the "Delaware and Maryland Rail Road Company," in the act of December, 1831, (see Paper Book p. 27,) extended to the consolidated company authorized by the laws of that State.

But the Court per Taney, Chief Justice, held that the exemption did not extend to a portion of the line, to which it had not extended before the union; see also the case of Tomlinson vs. Branch.—15th Wallace, 460,
in which Mr. Justice Bradley perspicuously reviews the case last above mentioned, defines its meaning and effect, and at page 466 declares, "it seems to us that this decision is directly in point and governs that branch of the case now under consideration."

Both of these cases last cited, the former on the precise and identical facts, and the latter on the same principles, exclude the conclusion contended for on behalf of the Plaintiff in Error, that an exemption from taxation of an entire line of railway, shall be implied from an exemption of a part under a separate charter. Both were cases of the proper construction of grants by a state of corporate privileges and franchises to its own corporations.

The laws of a State having of course, no jurisdiction, beyond the limits of such state. In the present case, however, a claim of exemption equally invalid and far more unreasonable is made on behalf of the Plaintiff in Error, by which he seeks to obtain exemption from taxation in the State of his domicile, (Delaware,) by virtue of an implied grant, arising out of the laws of another State, (Maryland.)

The attention of the Court is now desired to the Constitution of the State of Delaware of 1831, which was in existence and force before and at the time of the passage of the laws for the incorporation of the companies, herein before referred to, and now under consideration, and subject to the provisions of which all the said legislation was enacted.

By section 17 of article 2 of the Constitution of the State of Delaware, it is provided.

"No act of incorporation, except for the renewal of existing corporations, shall be hereafter enacted without the concurrence of two-thirds of each branch of the legislature, *and with a reserved power of revocation* by the legislature; and no act of incorporation which may be hereafter enacted, shall continue in force for a longer period than twenty years without the re-enactment of the legislature, unless it be an incorporation for public improvement."

The cases cited by the Plaintiff in Error in his brief, in which exemption from taxation was either expressly or by necessary implication sustained by any Court, have been almost without exception cases of bank charters, in which the exemption claimed was but for a term of years. (See Paper Book p. 20, 22, passim.) But the charter now under consideration being, to use the language of the Constitution of Delaware "for public improvement" and therefore perpetual, so that the exemption from taxation claimed is for all time to come, without regard to any change of circumstances or of emergencies, which may lie in the bosom of the future, and may not be met by the powers of subsequent legislatures.

To shear a State of a power so essential to her political existence is a most serious and dangerous proposition and will not be assented to by this Court unless they can find that something equivalent to an express surrender of the power has been contracted for by the legislature *in accordance with the State Constitution.*

It is submitted, that as the legislature had no power to incorporate any body without the *expressly reserved power* to any succeeding legislature to revoke such charter, it is not to be presumed that a surrender and perpetual release of the essential power to tax by the State could have been contemplated, when it can scarcely be ~~denied~~ imagined that the existence of a large mass of property and the exercise of valuable and profitable franchises carved out of the State's right of eminent domain and protected by its laws, should be suffered to continue perpetually in the bosom of a community without yielding reasonable pecuniary contributions towards maintaining its government.

Fortunately such power of revocation does exist in the case of the present charters and it is not believed that any such occasion or necessity for its exercise will ever arise.

To the second and sixth points of the Plaintiff in Error, "that the tax on capital stock imposed by the 4th section of the act of 1869, and the tax on net earnings of the P. W. and B. R. R. Co., were unconstitutional usurpations by the State of Delaware to tax property beyond its jurisdiction." We reply:

These taxes were laid upon "*all rail road and canal companies incorporated under the laws of this State and doing business within the State*, and which might hereafter become incorporated in this State."

With the further proviso—

"That where the line of rail road or canal belonging to any company liable to these taxes lies partly in this State and partly in an adjoining State or States, such company shall only be subject to said taxes in the proportion which the length of such rail road or canal within the limits of the State bears to the whole length of such road or canal.

It is admitted on both sides,

1st. That the Corporation in question whose property is taxed, was "incorporated under the laws of Delaware," and was and is "doing business within that State."

But it is argued that because some of the stockholders are non-resident in Delaware, the Corporation which represents their property cannot be taxed by the State whose laws gave it existence.

"*All subjects* over which the sovereign power of a State extends are objects of taxation—said Chief Justice Marshall In McCulloch vs. Maryland "and the sovereignty of a State extends to everything, *which exists by its own authority*, or is *introduced by its permission.*"

This is the doctrine reaffirmed by this Court in a current of authorities from 1819 down to the present time. Said Mr. Justice Clifford in delivering the opinion in the case of the Savings Bank vs. Coite, 6th Wallace, 605. "Power to tax is granted for the benefit of all, and none have any right to complain, if the power is fairly exercised, and the proceeds are properly applied to discharge the obligations for which the taxes were imposed. Such a power resides in government as a part of itself, and need not be reserved when property of any description, or the right to use it in any manner, is granted to individuals or corporate bodies."

Unless exempted in terms which amount to a contract the privileges of franchises of a private corporation are as much the legitimate subject of taxation as any other property of the citizens which is within the sovereign power of the State.

Repeated decisions of this Court have held, in respect to such corporations, that the taxing power of the State is never presumed to be relinquished, and consequently that it exists unless the intention to relinquish it is declared in clear and unambiguous terms."

"Nothing can be more certain in legal decision than that the privileges and franchises of a private corporation, and all trades and avocations by which the citizens acquire a livelihood may be taxed by a State for the support of the State Government.

The taxes in question are laid by the State of Delaware *upon a railroad company incorporated and doing business* in *that* State. *The taxes are laid upon the property of the company* and *are measured by the cash value of the shares of its capital stock* and the *net profits* of its business, followed by a reasonable restriction upon both amounts, that the measure of tax shall be in the proportion which the number of miles of the line of the railroad within the State of Delaware, bears to the entire line of the company's railroads.

It is laid in the form of a *modus*, by which a reasonable amount of taxation shall be secured from the property of the corporation.

The corporation holds valuable property real and personal in the State, and exercises valuable privileges and franchises within the State, granted by the State, from which result certain net profits all of which are legitimate subjects of taxation by the State.

That other States should have also granted separate charters to the same company is a fact, over which the State of Delaware has no control, and her assent to a consolidation and intermingling of the interests and business of such companies can by no just rule be construed to oust her from control and deprive her of the necessary power to tax property within her limits or introduced by her permission, and which her government is organized to protect in common with all other property.

If the argument of the Plaintiff in Error is to be sustained, its consequences may be summed up as follows:

The franchises and other property of a corporation existing under the laws of a State may be taxed by that State only, so long as the stockholders are residents of the State and the corporation has no interest or connection with any foreign individual or corporation, but the instant the stock or property of the company becomes in any degree blended with the stock or property of any description out-

side of the State lines, then ipso facto the power of the State to tax at all is gone and the corporation its franchises and property are emancipated from all obligations to pay taxes to either or any of the States whose laws created it, and is thus freed from all taxation by any power whatsoever; such is the argument in substance of the Plaintiff in Error, and at page 11 of his Paper book we find "the company has made large investments in the bonds and stock of other incorporated companies," which simply means that it has grown rich by the exercise of the franchise granted by the legislature of Delaware, and proposes now to kick away the ladder by which it rose to its present wealth and power. We are not aware that such a claim has ever been before advanced or gravely urged. The novelty of the invention might entitle it to a patent were any feature of *usefulness* discernable.

Companies holding charters from several States have been frequently decided to be a separate corporation in each of such States.

A dual existence cannot be recognized in this Court at any time.

Ohio vs. Wheeler.—1st Black, 297.

Farnum vs. Blackstone Canal.—1st Sumner, 47.

Commonwealth vs. the Cleveland and Ashtabula R. R. Co. 5 Casey, 371. 29 Penn. State.

Was the case of a company incorporated just by Ohio, and afterwards by Pennsylvania, and a union of the stocks permitted. A State tax imposed by the laws of Pennsylvania was sustained against the company, as upon a corporation of that State, without regard to its consolidation with a corporation existing in Ohio.

The case of Jackson vs. the Northern Central R. R., 7 Wallace, and the State Tax on Foreign held Bonds, 15 Wallace, p. 300, cited by the Plaintiff in error, in no degree sustain his present argument.

In those cases the tax was sought to be laid not on what the company *owned* but on what it *owed*. Not on its *property*, but on its *debt*.

The property that was so taxed belonged to and was held by a foreigner, and consisted of a debt of the company due to him, the evidence of which was its bond delivered to him—held by him abroad.

The State of Pennsylvania gave no protection to the holder or his bond; its protection was only to persons and property within its limits, and the right of taxation and co.relative duty of protection did not exist.

In the case before the Court no such facts present themselves. The corporation in question is a corporation of the State of Delaware existing there by virtue of its separate charter by that State—its *dual existence* cannot be recognized by the Court in this case.

The corporation is taxed according a certain measure, which the discretion of the proper power, i. e. the Delaware Legislature, has ascertained and decreed,—1st., a tax of one-fourth of one per centum upon the actual cash value of every share of the capital stock of said company; 2d, a farther tax of three per centum upon the net earnings or income received by said company from all sources during the preceding year, and the President and Treasurer of the company were required to furnish statements to the State's Treasurer in accordance with the law.

The Plaintiff in error complains that the ascertainment by the Legislature of the amount of tax so decreed, is purely arbitrary" and such no doubt is the exercise of all discretionary sovereign authority, but it is usual and lawful, and in this case was measured by the value of the property within the jurisdiction.

Said Mr. Justice Strong in delivering the opinion of this Court in State tax on gross receipts, 15 Wallace 296.

"It is not denied that net earnings of such corporations

are taxable by State authority without any inquiry after their sources, and it is difficult to state any well-founded distinction between the lawfulness of a tax upon them and that of a tax upon gross receipts, or between the effects they work upon commerce, except perhaps in degree. They may both come from charges made for transporting freight or passengers between the States, or out of exactions from the freight itself. Net earnings are a part of the gross receipts.

There is another view of this case to which brief reference may be made. It is not to be questioned that the States may tax the franchises of companies created by them, and that the tax may be proportioned either to the value of a franchise granted, or to the extent of its exercise; nor is it deniable that gross receipts may be a measure of proximate value, or, if not, at least to the extent of enjoyment. If the tax be in fact, laid upon the companies, adopting such a measure it imposes no greater burden upon any freight or business from which the receipts come than would an equal tax laid upon a direct valuation of the franchise. In both cases, the necessity of higher charges to meet the exaction is the same."

(Same case p. 296.)

To the third, fourth, seventh and eight points of the Plaintiff in Error, (see his Paper Book p. 34 and 37,) that the tax imposed on capital stock by the fourth section of the act of April 8th, 1869, was a violation of a clause of the Constitution of the United States which confers upon Congress the power to regulate commerce with foreign nations and among the several States."

And was an unlawful interference with the constitutional right of transit for persons and property from one State into or through another.

The Plaintiff in Error has considered these two points together and we will treat them together in reply.

In considering the former propositions of the Plaintiff we have endeavored to show that the taxes in question are

laid upon the corporation and measured by the actual cash value of its shares of stock and the amount of its net receipts or income, and it is not necessary to repeat what we have already said on that head.

The question is, has the State of Delaware by the passage of the law in question in any way impeded or controlled any law of Congress, carrying into execution the powers vested in the Federal Government, or does the law of Delaware interfere with any agency or instrumentality of the Government of the United States in the regulation of commerce between the States?

As this subject has been so lately the subject of elaborate and careful examination by this Court in sundry cases, it will be safer to use the language of the Court in their decisions.

Thompson vs. Pacific R. R.—9th Wallace, 587.

Chief Justice Chase in delivering the opinion of the Court said at page 587.

This exemption is not claimed under any act of Congress. But it is earnestly insisted that the right of exemption arises from the relations of the road to the General Government. It is urged that the aids granted by Congress to the road were granted in the exercise of its constitutional powers to regulate commerce, to establish post offices, and post roads, to raise and support armies, and to suppress insurrection and invasion; and that by the legislation which supplied aid, required security, imposed duties and finally exacted, upon a certain contingency, a percentage of income, the road was adopted as an instrument of the Government, and as such was not subject to taxation by the State, (and at p. 590.)

In the case of McCulloch vs. Maryland, the State tax held to be repugnant to the Constitution was imposed *directly* upon an *operation* or an *instrument* of the *government*. That such taxes cannot be imposed on the operations of the government, is a proposition which needs no argument to support it. And the same reasoning will ap-

ply to instruments of the government, created by itself, for public and constitutional ends.

But *we are not aware* of *any case* in any in which the real estate, or other property of a corporation not organized under an act of Congress, has been held to be exempt, in the absence of express legislation to that effect, to just contribution, in common with other property, to the general expenditure for the common benefit, because of the employment of the corporation in the service of the government.

No one questions that the power to tax all property, business, and persons, within their respective limits, is original in the States and has never been surrendered. It cannot be so used, indeed, as to defeat or hinder the operations of the National Government; but it will be safe to conclude, in general, in reference to persons and State corporations employed in government service, that when Congress has not interposed to protect the property from State taxation, such taxation is not obnoxious to that objection.

We perceive no limits to the principle of exemption which the Complainants seek to establish. It would remove from the reach of State taxation all the property of every agent of the government. Every corporation engaged in the transportation of mails, or of government property of any description, by land or water, or in supplying materials for the use of the government, or in performing any service of whatever kind, might claim the benefit of the exemptions.

State Tax on Railway Gross Receipts, 15 Wallace, 293.

Mr. Justice Strong delivering the opinion of the Court said:

"No doubt every tax upon personal property, or upon occupations, business, or franchises, affects more or less the subjects, and the operations of commerce. Yet it is not everything that effects commerce that amounts to a regulation of it, within the meaning of the Constitution.

We think it may be safely asserted that the States have authority to tax the estate, real and personal, of all their corporations, including carrying companies, precisely as they may tax similar property when belonging to natural persons, and to the same extent. We think also that such taxation may be laid upon a valuation or may be an excise and that in axacting an excise tax from their corporations, the States are not obliged to impose a fixed sum upon the franchises or upon the value of them, but they may demand a graduated contribution, proportioned either to the value of the privileges granted, or to the extent of their exercise, or to the results of such exercise. No mode of effecting this, and no forms of expression which have not a meaning beyond this can be regarded as violating the Constitution."

Osborn vs. City of Mobile, 16th Wallace p. Was the case of taxation by the City of Mobile in Alabama, upon a corporation chartered by the State of Georgia. The business of the party taxed was commercial intercourse with States outside of Alabama and a higher license fee was charged to parties doing business beyond the State line, than to parties whose business was wholly confined to the State of Alabama. This Court sustained the tax and expressed a strong unwillingness to give such construction to the law of a State as would diminish the State's necessary power of taxations.

This disposes of the points raised by the Plaintiff in Error for discussion in his Paper Book and are believed to have been satisfactorily answered in this brief and disposed of by the learned Judge, (Mr. Justice Strong) in the opinion filed by him in the Circuit Court, a copy of which is printed with this brief and referred to by the Defenddants in Error.

T. F. BAYARD,
E. SAULSBURY,
For Defendants in Error.

In the Circuit Court of the United States for the District of Delaware.

WILLIAM MINOT, JR.

VS.

The Philadelphia, Wilmington and Baltimore Rail Road Company.

STRONG, J.

The complainant is a citizen of the State of Massachusetts and a stockholder of the Philadelphia, Wilmington and Baltimore Railroad Company, a body corporate of the State of Delaware, under the laws of that State. The Defendants are the said company and two other citizens of Delaware, one the Treasurer of the State, and the other Collector of State Taxes. The facts of the case out of which title to equitable relief is claimed to arise are these. By an act of Assembly of the State of Delaware, passed in 1832, and a supplement thereto, a corporation named the Wilmington and Susquehanna Rail Road Company was created, with power to build and maintain a rail road from the boundary line of Pennsylvania and Delaware to the City of Wilmington, and thence to the line of the State of Delaware toward the Susquehanna, in the direction of Baltimore. The act provided that the company should pay annually into the treasury of the State a tax of eight per cent. on all dividends which might exceed six per centum on the capital stock actually paid in.

This provision was subsequently repealed, and it was enacted that the company should pay annually into the treasury of the State a tax of one-quarter of one per cent. on the capital stock of four hundred thousand dollars.

Under an act of Assembly of the State of Maryland, enacted in 1831, and under its supplements, another railroad company was created, called the Delaware and Maryland Rrailroad Company, with power to construct and maintain a railroad from some point on the Delaware and Maryland line to some point on the Susquehanna River, and it was provided in the act that the shares of the capital stock of the company "should be exempt from the imposition of any tax or burden by the State's assenting to the said act, except upon that portion of the permanent and fixed works of said company which might lie within the State of Maryland." About the same time, (namely in the year 1831,) under an enactment of the Legislature of Maryland, another company was chartered, called the Baltimore and Port Deposit Railroad Company, with power to construct and maintain a railroad from Baltimore to Port Deposit, which is on the Susquehanna river. And in the same year, [1831] the Legislature of Pennsylvania authorized the incorporation of a company called "The Philadelphia and Delaware County Railroad Company," with power to construct a railroad from Philadelphia along or near to the route of the Baltimore post road to the Delaware State Line. The name of this company was subsequently changed to that of "The Philadelphia, Wilmington and Baltimore Railroad Company." All these companies were organized, and their roads formed a complete line between the cities of Philadelphia and Baltimore, needing only a bridge across the Susquehanna, which was subsequently built by the consolidated company at a cost of about one million and a-half dollars. It was doubtless the intention of the several legislatures to provide for a continous line between the two cities. Subsequently, under the authority of legislative acts of the State of Maryland and Delaware, passed in 1835, the Wilmington and Susquehanna Railroad Company and the Delaware and Maryland Railroad Company were consolidated under the corporate name of the former, and became one body politic or corporate, the capital stock of the two companies being united. The act of Assembly of the State of Delaware authorizing the consolidation enacted that the holders of the stock of the united companies should hold, possess and enjoy all the property, rights and privileges, and exercise all the powers granted and vested in the said railroad companies, or either of them, by it or any other law or laws of Delaware or Maryland. A similar act was passed by the Legislature of Maryland. Thus the four companies became reduced in number to three. A further consolidation then took place. In the year 1838, the three companies, under Legislative provisions of the three States named were united and merged into each

other, thus becoming one body corporate with a common stock, and having as the corporate name "The Philadelphia, Wilmington and Baltimore Railroad Company." The act of the Legislature of Delaware, under which the consolidation was effected, declared that "the respective companies shall constitute one company, and be entitled to all the rights, privileges and communities which each and all of them possess, have and enjoy under and by virtue of their respective charters." The words of the Maryland act were, "that the said body corporate so formed shall be entitled, within this State, to all the powers and privileges and advantages now belonging to the two first above named corporations," (those whose roads lay within Delaware and Maryland.) Such was the origin, and such are the rights of the corporation defendant so far as they need now be stated. The company has completed, and it now mantains a continuous railroad route from Philadelphia to Baltimore, through parts of the three States named. Its capital stock consist of 186,088 shares fully paid, each of the par value of fifty dollars: although at its formation it had only forty-five thousand shares. Of these less than two thousand were held by citizens or residents of Delaware on the 30th of June, 1869. The entire length of the railroad is 99.74 miles, of which only 23.08 miles are in the State of Delaware, and the value of the property locally situated in that State is much less than twenty-three ninety-ninths of the whole. Much the larger portion of the locomotive, passenger and freight cars and trucks belonging to the company were used during the year 1869 for the purpose of transporting persons and freight in and by a continuous course of transporting through, from and into the State of Delaware, and very few were used exclusively within the State.

By an act of Assembly of the State of Delaware, passed April 8th, 1869, the Legislature imposed upon ever railroad and every canal company incorporated by or under any law of the State, and doing business therein, in addition to other taxes then imposed by law, a tax of one-fourth of one per cent, of the actual cash value of every share of the capital stock of such company, directing the tax to be paid to the State Treasurer on the first day of the next following July, and on the first day of July in each and every year thereafter. The President or Treasurer of every such company was required to furnish to the State Treasurer every year a statement of the number of shares of the company, with an appraisement thereof varified by his oath or affirmation, on the first of each July, and forwith to pay the amount of the tax.

It was provided, however, in the act, that when the line of a railroad or canal belonging to any company liable to the tax lay partly in the State of Delaware and partly in an adjoining State or States, such company should be required to pay the tax on such number of the shares of its capital stock as should be in that proportion to the whole number of shares of such stock which the length of such railroad or canal within the limits of the State should bear to the entire length of such railroad or canal. By the fifth section of the act it was enacted that if the President or Treasurer of any company liable to the tax should neglect or refuse to furnish the statement above described for a period of ten days after it was required to be furnished, the State Treasurer should notify an assessor to assess the tax, and issue a warrant to a collector of state taxes to collect the same.

The first section of the same act imposed another tax upon the same class of companies, with similar provisions for its ascertainment and collection. It was a tax of three per cent, upon the net earnings or income received by such railroad or canal company from all sources during the preceding year, with proviso like that contained in the fourth section already mentioned. This tax required to be returned and paid on the first day of January in each year, or within thirty days thereafter.

The third section of the same act imposed yet another tax, with similar provisions for its return and collection. It enacted that every railroad company incorporated by the State, and doing business therein, should, on the first of January in each year thereafter, or within thirty days from such time pay to the State Treasurer a tax of one hundred dollars for the use in the said State of Delaware of each locomotive belonging in whole or in part to such company, and at any time during the preceding year used by said company within the State of Delaware, and twenty-five dollars for the use in the State of each passenger car belonging in whole, or in part, to such company and at any time during the preceding year used by said company within the State, and ten dollars for the use in the State of each freight car of every description, and each truck belonging to such company and at any time within the preceding year used by said company within the State. The sixth section of the act enacted that in case of default in paying any of the said taxes, a penalty of ten per cent. thereon shall be added by the collector and collected with the tax.

The complainant charges that all the taxes are illegal; that they are imposed in violation of the right conferred upon the Philadelphia, Wilmington and Baltimore Rail Road Company by its charter, and that they are forbidden by the Constitution of the United States. On the 25th of November, 1869, he inquired of the company whether they intended to protect his interests as a stockholder by resisting the collection of the tax, and stated that, as it was illegal, protection against it should be provided for. In response to his inquiries the Board of Directors resolved, that while they protested against the legality of the tax, they declined to take the responsibility of interfering to prevent its collection, leaving the stockholders at liberty to assert their rights as they might think proper. The complainant then filed this bill, praying that it may be decreed the corporation is not bound to pay said taxes, or any of them, and that the act of the Delaware Legislature, so far as it imposes them, and provides for their assessment and collection is unconstitutional and void. The bill also prays an injunction, upon the company against furnishing the statements required by the act, or paying the taxes, and upon the other defendants against taking steps for their collection.

At the argument it was queried whether the case is within the jurisdiction of this court, and whether, if it is, the case presented is a proper one for equitable cognizance. Upon these points I have no doubt. The complainant is a citizen of Massachusetts and the corporation defendant is a corporation that owes its life to the State of Delaware, a citizen therefore of that State within the meaning of the judiciary act. True, it is also a corporation of Pennsylvania and of Maryland, but it is not the less, on that account, a corporation of Delaware. It has been sued in the Circuit Court of the United States at least twice before, and the fact that it is a corporation of three States has not been considered an objection to Federal jurisdiction. The other two defendants are citizens of Delaware. And, that the court has equitable jurisdiction of such a case as the present is not open to denial. That it has, repeated decisions show, and such has been the determination of the Supreme Court. *Dodge vs. Woolsey*, 18 How. 331. It was also submitted at the argument, with some hesitation, that the act of the Delaware Legislature, passed April 8, 1869, was not intended to apply to this rail road company. As I have no doubt that it was, I pass this by and come directly to the great question of the case, Is the act unconstitutional so far as it imposes the taxes mentioned in it upon the corporation defendant?

The argument on behalf of the complainant is, that in the charter of the company there is an express exemption from liability to the imposition of any such taxes, and that the charter being a contract with the State, the act of Assembly of 1869 is in conflict with the provision of the constitution that inhibits the States from passing any law impairing the obligations of contracts. If it be the fact that the charter contains such an exemption, it must be admitted that the consequence mentioned follows, for it is too late to deny that the charter is a contract between the State and the company, and (however well it might be doubted, if it were an open question) it must be conceded that a State acting through its legislature may, by contract, in whole or in part, denude itself of power to impose taxes upon a corporation created by it. True, this is a step toward self-destruction, and we would think no State constitution gives such power to its legislature. Yet it has more than once been decided, and many contracts made by States with corporations that their property shall be exempt from taxation in whole, or in part, for limited periods or permanently, have been enforced. See cases collected in *Home of the Friendless vs. Rouk*, 8 Wallace 430. But I do not think the charter of this company contains any express exemption from liability to such taxation as the State of Delaware is now attempting to enforce. What is relied upon by the complainant in support of his assertion that the company is thus exempted, is the 19th section of the Maryland act incorporating the Delaware and Maryland Railroad Company. By that section that company was declared to be exempt from the imposition of any tax or burden, by the State's assenting to the law, except upon that portion of the permanent and fixed works of said company which may lie within the State of Maryland, and it was further declared that any tax which should thereafter be levied upon said sections should not exceed the rate of any general tax which might at the same time be imposed upon similar real or personal property of the State for State purposes. And when by its act of July 24th, 1835, the Delaware Legislature consented to the consolidation of that corporation with its own company, "The Wilmington and Susquehanna Railroad Company," under the corporate name of the latter, it was enacted in the first section that the holders of the stock of the said railroad companies so united, as provided for, "shall hold, possess and enjoy all the property, rights and privileges, and exercise all the powers granted to and vested in the said railroad companies, or either of them," by that act, or by any other law or laws of Delaware or Maryland. So a prior act passed in 1833, whereby the Wilmington and

Susquehanna Railroad Company was authorized to form a union with such companies as then were or might thereafter be incorporated in the States of Pennsylvania and Maryland for the purpose of constructing rail roads in said States, so that the capital stock of said companies should constitute a common stock, enacted that the respective companies should "constitute one company and be entitled to all the rights, privileges and immunities which each and all of them possess, have and enjoy under and by virtue of their respective charters." Hence it is argued that because the Delaware and Maryland company was expressly exempted from any taxation except upon its fixed and permanent property lying within the State of Maryland, the consolidated company, namely, this defendant corporation, is entitled to the same exemption in the State of Delaware. To this I cannot assent. The argument, I think misapprehends the statutes upon which it is built. True, the present company possesses all the rights and immunities which each of its constituents enjoyed before this consolidation. But what were those rights and immunities? Unquestionably they were only such as could be conferred by the States that created the corporations. The Legislature of Maryland could not confer upon the corporations created by it any right in Delaware. Nor could it confer upon them any immunity from taxation upon their property within the State of Delaware. I mean any immunity from Delaware taxation. And it made no attempt to do so. The 19th section of the act of 1835 refers to exemption from Maryland taxation, and to no greater. That was the right, the privilege, the immunity possessed by the Delaware and Maryland Railroad Company, and that right or immunity belongs now to the consolidated company. The language of the acts authorizing an union of the companies is not that they shall, when united, have all the rights and immunities *in this State* which each of them has in the State by which it was chartered. The purpose was not to exceed any of the powers or privileges possessed by the several companies, but to give them, as they were collectively, to the united company. In other words, it was intended that the consolidated company might exercise within Maryland the rights of the Maryland corporations, and enjoy their privileges, and within Pennsylvania possess the rights and privileges of the former Pennsylvania company. Such I understand to have been the construction adopted by the Supreme Court in 10 Howard, 376, *Philadelphia and Wilmington Railroad Company vs. Maryland.* The act of Maryland which authorized the two companies of that State to unite with the companies of the other States, enacted that the new corporation, that is,

the consolidated one, should be entitled within that State to all the powers and privileges and advantages then belonging to the two Maryland corporations. In commenting upon this Chief Justice Taney remarked as follows; "Now as these companies held their privileges under different charters, the evident meaning of this provision is, that whatever privileges and advantages either of them possessed should in like manner be held and possessed by the new company, to the extent of the road they had respectively occupied before the union, that it should stand in their place, and possess the power, right and privileges they had severally enjoyed in the portions of the road which had previously belonged to them. I hold, therefore that there is in the charter of the present defendant corporation no express exemption from liability to taxation by the state of Delaware.

And I can find nothing in any of the legislative acts relative to this company (viz: acts that gave it its existence) which, in my opinion, would justify me in holding it impliedly exempt from such taxation. Any implication to have such an effect must be a necessary one. Every presumption is against it. The right to tax all property of natural and artificial persons within a State is an attribute of State Sovereignty. Conceding now, as I must, in view of past decisions, that it may be partially surrendered, it must still be ruled that as the right is essential to the existence of the body politic nothing less than that which is equivalent to an express surrender of it, by a binding contract, will avail to enable any person or corporation successfully to assert an exemption from liability to its exercise. Without attempting to cite even a tithe of the cases in which this principle has been asserted, I mention two. *Providence Bank vs. Billings*, 4 Peters, 503. *Railroad Companies vs. Maryland*, 10 How. 376. What is relied upon by the complainants as raising an implication of exemption are the following provisions of the acts already mentioned. By the Delaware act of January 18, 1832, which incorporated the Wilmington and Susquehanna Railroad Company, the capital stock was defined to be $400,000.00 and the company was required to pay annually into the treasury of the State a tax of eight per centum on all dividends which might exceed six per cent. on the capital stock actually paid in. By the supplement to this act, passed July 24, 1835, this provision respecting a tax on dividends was repealed, and it was enacted that the company should pay annually into the treasury of the State a tax of one-quarter of one per cent. on the capital stock thereof of $400,000,00, the tax to be paid semi-annually. By a further sup-

plement, passed June 17, 1836, the company was authorized to increase its capital stock to an extent not exceeding $300,000, with a proviso that the right of taxing the said sum, when it should become a part of the capital stock, should be reserved to the Legislature. As all the privileges and immunities of this company have devolved upon the now existing company, it is argued that the stipulation that the Wilmington and Susquehanna Company should pay a tax of one-quarter of one per cent. on its capital of $400,000.00, amounts to a contract that it shall not be liable to further taxation, and that consequently the present defendant corporation is protected to that extent. To this I cannot accede. The act of 1835 does not declare that no other taxation shall be imposed, or that the power of the State is exhausted, nor is such the necessary implication from what was said. Certainly it is not to be inferred from the imposition of a tax that no additional tax shall be laid, and I cannot perceive that it makes any difference whether the tax is imposed by general law, or reserved in a contract obtained from the State. All persons dealing with the State are presumed to know the character of the party with whom they are dealing, and if they are obtaining a grant of a franchise, that the grant is always construed strictly against the grantee. In *Commonwealth vs. The Easton Bank*, 10 Barr. (Penna.) 442, it was decided that a bank which had been chartered under a general law that prescribed the payment of a specified tax on its dividends, was subject to a later general law increasing the rate of taxation, and that the later law, as applied to the bank, was constitutional. I agree that the reservation in the act of 1836 of a right to tax the additional stock authorized, tends to awaken a suspicion that the Legislature had some doubts, whether, without the reservation, any tax could be imposed additional to that spoken of in the act of 1835. But this is not enough to overcome the presumption that there was no intention in either act to destroy the right of the State to prescribe such taxation as its necessities might require. It has been argued that when a charter has been granted to a company, and a *bonus* has been exacted for it, the franchise and property of the company cannot be taxed any further than is provided in the charter, because, if I understand the argument correctly, the company is a purchaser of its rights in such a case. If this were so, the argument does not apply to the case in hand, for no bonus was exacted from this company. It cannot be said that the tax laid of one-quarter of one per cent. was, in any proper sense, a stipulation for a bonus. But I do not agree that a company which has paid a bonus for its charter is thereby freed from liability to taxation.

There is no reason, that will bear examination, for any such doctrine. If there be a bonus paid it is only a part of the price paid for the franchise granted. It is measurably the consideration for the State's contract. But every charter to an improvement company is based upon a consideration given, or to be given by the grantee. If it were not so, it would not be a contract. It may not be a pecuniary consideration paid into the State treasury. It may be money expended for a public use, the construction of a highway, or something in which the public has an interest. What matters it then that the payment of a bonus makes the grantee of a franchise a purchaser, when all grantees of corporate franchises are purchasers? There is a consideration given in all cases. The quantum of the consideration is quite immaterial. The grantee of land from a State is commonly a purchaser for a consideration paid. He holds his title by contract. No one ever doubted that he takes the land subject to taxation. Why should it be otherwise with the grantee of a faanchise? Land is no more property than is a franchise. This has often been decided. Both are subject to the right of eminent domain. *Bridge Coms. vs. Dix*, 6 How. 507; 17 Conn. 454, 3 Paige Cha. Reps. 45. Both in grants of land and in grants of franchises the subjects of the grant are understood to be held under government, not against it, and of course they are subordinate to the powers of the government, except so far as those powers have been unmistakably relinquished.

And I do not find that the authorities sustain the doctrine that the payment of a bonus for a charter protects the grantee of a franchise from all taxation except such as the State has reserved in the charter itself a right to impose. The Ohio Bank cases in 16th and 18th Howard certainly decide no such thing. In those cases it appeared there had been an express exemption, and what would have been the effect of a bonus paid was not considered. What was decided in *Jefferson Branch Bank vs. Skelly*, 1 Black. 436, was that the charter of a bank is a franchise not taxable, as such, if a price has been paid for it, which the legislature has accepted with a declaration that it is to be in lieu of all other taxation. On the other hand in *Bank of Pennsylvania vs. The Commonwealth*, 7 Harris, (19 Penna. State Reports,) 144, where it appeared that by the charter of a bank it had been required to pay a regular bonus, it was nevertheless subject to an increased tax subsequently imposed. It was ruled that the bank acquired no privilege, exemption, or immunity under its charter, except what was given expressly and unequivocally; that corporate

privileges are never implied; that the legislature can only disarm the State of any portion of the sovereign power which belongs to her by words showing that to be her intention so plainly that they cannot be misunderstood; that the taxing power is an incident of the State sovereignty, and that the State does not lose it by granting a charter which says nothing on the subject. This was said of a charter that exacted a bonus of hundreds of thousands of dollars. The case of *Gordon vs. Appeal Tax Court*, has been called to my attention. 3 Howard, 133. It must be admitted that Mr. Justice Wayne, who delivered the opinion of the Court, seems to have thought the acceptance of a proffered bank charter which required the payment of a bonus constitutes a contract that binds the State not to impose any further tax upon the franchise granted, though not interfering with the right to tax the capital stock of the company. In answer to the question, "Why, when bought, the franchise, as it becomes property, may not be taxed as land is which has been bought from the State?" he said, "the reason is that every one buys land subject in his own apprehension to the great law of necessity, that we must contribute from it, and all of our property, something to maintain the State. But a franchise for banking when bought, the price is paid for the use of the privilege while it lasts, and any tax upon it would be substantially an addition to the price."

I confess that I do not feel the force of this attempted distinction. I do not see why, if a tax is an addition to the price in one case, it is not in the other. The truth is, it is in neither, for the purchaser in neither case has bought anything more than a right to enjoy the subject of the grant subordinately to the constitutional claims of the government. This is all that is meant by property held in civil society. But the remarks of Mr. Justice Wayne upon this subject were *obiter dicta*. The thing decided in the cause was that the State of Maryland could not impose a tax upon the bank either for its franchise or its capital, but upon its stockholders for the shares held by them individually, the charter of the bank having been granted in consideration of a bonus paid, and containing an express stipulation that the faith of the State was pledged not to impose upon the bank any further tax or burden during the continuance of its charter under the act. My attention has been directed to no case which maintains the doctrine for which the complainants contend. It is sustained neither by reason, nor by authority. If therefore it be true (which I do not concede) that the clause in the Delaware Act of Assembly, passed July 24, 1835, which imposed on the Wilmington and Susquehanna

Railroad Company a tax of one-quarter of one per cent. on its capital stock was the exaction of a bonus, it does not in my opinion, deprive the State of the power to levy upon the corporation defendant in this case additional taxes. I come then to the conclusion that there is nothing in the act of Assembly of April 8th, 1869, so far as it imposes upon the company an additional tax of one-fourth of one per cent. on the cash value of its capital stock, and a tax of three per centum of its net earning, that is in conflict with the constitutional inhibition that no State shall pass a law impairing the obligations of contracts. With the fairness of such taxation I have nothing to do. The question before me is exclusively one of legislative power, and I think the Legislature has not thus far transcended its legitimate authority.

The remaining question is attended with more difficulty. I refer to the legality of the tax imposed by the third section of the act. That section exacts from the company the payment every year of a tax of one hundred dollars *for the use* in the State of each locomotive, owned in whole or in part by the company, and at any time during the preceding year, used by the company within the State. A similar tax, though less in amount, is imposed *for the use* in the State of each passenger, freight, and truck car, for the use of the rolling stock generally. This is not a tax upon the property of the company, nor upon its franchise generally. It is not a tax upon the locomotives or cars. It is called a tax upon their *use* in the State, but it seems to be rather a license fee exacted for the privilege of using rolling stock. Can such a burden be imposed? I have said the franchise can be taxed as property, and that the property acquired, or held under it, is taxable; but it may be doubted whether such an exaction as this can be regarded as a tax either on the franchise or on the property of the company. Can the State, after having granted to the complainants the right to run locomotives in and through its territory freely, and also the right to use all the ordinary means of conveying freight and passengers, compel the payment of license fees for the use of those ordinary means of transportation, and that not for police purposes? Can it say to the grantees of the franchise: "true you have purchased the right to use locomotives and cars, but if you use them you shall pay an additional price?" And is not a license fee thus exacted an additional price? I do not propose, however, to answer these questions, or to decide that such an exaction is or is not an impairing of the obligation of the contract between the company and the State, for, in my opinion, the law of the State that attempts to

impose this tax or duty is invalid for other reasons. In the statement of facts to which the parties have agreed I find the following: It is agreed "that much the larger portion of the locomotive engines, passenger cars, freight cars, and trucks belonging to the Philadelphia, Wilmington and Baltimore Railroad Company, were used during the year 1869, [the year for which this tax is attempted to be collected,] on the aforesaid main line of railroad of the said company, extending from the City of Philadelphia, in the State of Pennsylvania, through the State of Delaware to the City of Baltimore in the State of Maryland, and for the purpose of transporting persons and property in and by a continuous course of transportation, through, from, and into the said State of Delaware; that a number of engines, passenger and freight cars and trucks were used during the said year on the main line from Philadelphia to a point about a mile beyond Wilmington, and thence on the line of railroad known as the Peninsular line, extending through Delaware and a part of the Eastern Shore of Maryland to Crisfield, and the several branches therefrom, and that very few of either the engines, cars or trucks of the said company were used exclusively within the State of Delaware during the year 1869."

It is therefore admitted that the tax or license fee is laid upon the use of locomotives, cars, &c., mainly employed in transporting persons or property through the State from other States, or into it, or out of it. Such an imposition is, in my opinion, a regulation of commerce between States. It is a prescription that passengers and merchandise shall not be carried through the State except upon certain conditions. If the tax can be imposed at all, it may be to any extent. It has often been said that when a right to tax exists, it is unlimited by anything but the discretion of the legislature that imposes it. This of course is to be understood as applying only to cases where the State has not by contract restricted its power. Said Chief Justice Marshall in *McCulloch vs. Maryland*, 4 Wheat 316, "an unlimited power to tax involves necessarily a power to destroy, because there is a limit beyond which no institution and no property can bear taxation. A question of constitutional power can hardly be made to depend on a question of more or less. If the States may tax, they have no limits but their discretion, and the bank must therefore depend on the discretion of the State for its existence." If this is so, the power to tax thence of all means or instruments of conveyance of persons or property through the State is the same as a power to prevent such use entirely. There is only a difference in the extent of its exercise. Now I think it can

hardly be maintained that a law declaring merchandise and passengers shall not be carried on a public highway by locomotives or cars from Pennsylvania through the State of Delaware into Maryland would not be a manifest regulation of inter-state commerce; quite as truly such as was the embargo of 1807 a regulation of foreign commerce. And if the enactment of such a law would be beyond the constitutional power of a State, the act of the Delaware Legislature, of which the plaintiffs complain, must be equally so, for it differs only in degree, and it is not the less a commercial regulation, because it does not discriminate between transportation exclusively domestic, and that which extends into other States. If a State chooses to exact conditions for allowing the passage or carriage of persons or freight through it into another State, the nature of the exaction cannot be changed by adding to it similar conditions for allowing transportation wholly within the State. I need hardly say that a tax upon the use of the ordinary and lawful means of transportation is practically a tax upon the thing transported.

Holding then as I do that the Delaware Statute of April 8, 1869, was an attempted regulation of commerce among the States, I come next to the question whether it was beyond the power of the State to make. I shall not enter at large upon a discussion of the much debated question, how far the power given to Congress by the Constitution to regulate commerce among the States is exclusive. Certain it is that in the earlier decisions of the Supreme Court it was said to be unlimited, and so exclusively vested in Congress that no part of it can be exercised by a State, except the power to regulate commerce completely internal, that is entirely within a single State. *Gibbons vs. Ogden*, 9 Whea. 1, and the passenger cases, 7 Howard 383. I am aware that it has often been argued and sometimes intimated in decisions, that so far as Congress has not legislated on the subject, the States may regulate commerce, at least, internal commerce. Of this I remark in passing, that if they can, it is difficult to see why they may not add regulations to foreign commerce beyond those made by Congress, for the power over both is vested in the Federal Legislature by the same words. But I apprehend it will be found on examination that the cases that have sustained State laws alleged to have been regulations of inter-state commerce have been those that related to bridges or dams across streams wholly within a State, or other kindred subjects, things only in a restricted sense commercial subjects. *Wilson vs. Blackbird Creek Co.*, 2 Peters, 250; *Gilman vs. Philadelphia*, 3 Wallace 713. They

are exceptional. The subjects are such as in the last mentioned case it is said, "can be best regulated by rules and provisions suggested by the varying circumstances of different localities, and limited in their operations to such localities respectively." But, without pursuing this subject further, it may safely be said that none of them are like the present. They admit, and some of them assert, that whatever subjects of the power to regulate commerce are in their nature national, *or admit of one uniform system or plan of regulation*, may justly be said to be of such a nature as to require exclusive legislation by Congress. Surely passage and transportation through a State are of this nature. If not, it is unfortunate. It is of national importance that in regard to such subjects there should be but one regulating power, for if one State can directly tax persons and property passing through it, or indirectly, by taxing the use of means of transportation, every other may, and thus commercial intercourse between States remote from each other may be destroyed. The produce of Western States may be effectually excluded from Eastern markets, for though it might bear the imposition of a tax by one State, it would be crushed under the weight of many.

I have already protracted this opinion to such a length that I do not feel justified in rferring to many of the decided cases. In *Almy vs. The State of Caltfonin*, 24 How. 169, it was ruled by the Supreme Court that a law of the State imposing a stamp duty upon bills of lading for gold or silver transported from that State to any port or place our of the State was substantially a tax upon the transportation itself, and was unconstitutional. It is true the decision was rested on the ground that it was a tax upon exports, and subsequently in *Woodruff vs. Parkham*,, 8 Wallace, 123, the Court denied the correctness of the reasons given for the decision, but they said at the same time, the case was well decided for another reason, viz: that such a tax was a regulation of commerce, a tax imposed upon the transportation of goods from one State to another over the high seas, in conflict with that burden of transit of goods and persons between one State and another which is within the rule laid down in *Crandall vs. Nevada*, 6 Wall. 35, and with the authority of Congress to regulate commerce among the States. In the very recent case of *Crandall vs. The State of Nevada*, 6 Wall. 35, it was held that a special tax imposed by the State on railroad and stage companies for every passenger carried out of the State by them was a tax on the pessenger for the privilege of passing through the State by the ordinary modes of travel, and not simply a tax on the business of the companies.

Hence it was ruled that the power of a State to impose such a tax is inconsistent with rights conferred by the Constitution on the Federal government, and on the people, and consequently that no State can levy such a tax. The majority of the Court indeed declined to put their decision upon the ground that the tax was a regulation of inter-state commerce, and as such beyond the reach of the State, but all the Judges agreed that the State law was unconstitutional and void. The Chief Justice and Mr. Justice Clifford thought the judgment should have been placed exclusively on the ground that the act of the State legislature was inconsistent with the power conferred upon Congress to regulate commerce among the several States, and I do not understand that the other members of the Court held decisively that it was not thus inconsistent. The case, in any view of it, decides that a State cannot directly or indirectly tax persons for passing through or out of it. That is enough for the case I have before me. The Delaware Statute of April 8, 1869, does indirectly levy a tax upon both person and property for transit through the State, into it, and out of it. It is therefore, in my opinion, so far in conflict with the Constitution of the United States.

I shall therefore enjoin against any steps for the assesment, collection of payment of tha tax prescribed by the 21st [3d] Section of the act of April 8, 1869, namely, the tax for the use of locomotives, passenger cars, freight cars, and trucks, and I shall refuse the injunction prayed for to prevent the collection and payment of the tax prescribed by the 15th [4th] Section upon the actual cash value of every share of the capital stock of the company defendant, and I shall also refuse an injunction against the collaction and payment of the tax prescribed by the 20th [1st] Section upon the net earnings or income of the company.

Let a dacree be prepared accordingly.

NOTE—In the last paragraph of the foregoing opinion the Sections of the Act of April 8 ware incorrectly numbered in the copy furnished the printer, The necessary corrections are inserted in the proper place between brackets, [ ]